



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2015

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2015-19468

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 579657.

West Texas A&M University (the "university") received a request for a specified proposal received in response to a specified request for proposals. Although the university takes no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Caldwell & Gregory ("C&G"). Accordingly, you state, and provide documentation showing, you notified C&G of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from G&C. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

C&G argues its information is excepted from disclosure under section 552.104 of the Government Code.¹ Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*,

¹We understand G&C to raise section 552.104 of the Government Code based on its arguments.

No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at *9. C&G states it has competitors. In addition, C&G states release of the requested information will greatly disadvantage C&G in future bids in Texas and other states. After review of the information at issue and consideration of the arguments, we find C&G has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 579657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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