



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-19825

Dear Ms. Tynan:

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# 580341 (OGC# 162868).

The University of Texas Medical Branch (the "university") received a request for information regarding the final results of awards for two specified requests for proposals. You state you do not have some of the information responsive to the request.¹ You the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of some of the submitted information may implicate the interests of third parties. Accordingly, you notified the third parties of the request for information and of their rights to submit arguments stating why their information should not be released.² See Gov't Code § 552.305 (permitting interested third party to submit to attorney general

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²The notified third parties are: Smith & Nephew, Community Tissue Services, Integra Orthobiologics, Medtronic Sofamor Danek USA, Inc., and Stryker Orthopaedics.

reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). You represent the information pertains to a competitive bidding situation. In addition, you state a request for proposals for musculoskeletal implants and related biologics was being solicited when the university received the present request for information. You explain releasing the current contracts and proposals at issue, which are for the same services, could impair the university’s ability to negotiate contracts for the pending request for proposals. After review of the information at issue and consideration of the arguments, we find the university 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) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 580341

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Chief Operating Officer
Community Tissue Services
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(w/o enclosures)

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IsoTis OrthoBiologics
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