



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2015

Ms. Jennifer Burnett
Attorney
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-24803

Dear Ms. Burnett:

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# 588683 (OGC# 164472).

The University of Texas at Austin (the "university") received a request for a specified contract awarded to a named company during a specified time period. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Fonemed, LLC ("Fonemed"). Accordingly, you state, and provide documentation showing, you notified Fonemed of the request 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 comments from Fonemed. We have considered the submitted arguments and reviewed the submitted information.

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). 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*, 466 S.W.3d 831 (Tex. 2015). You state the submitted information relates to an existing contract executed by the university. You explain the university is currently engaged in an ongoing bidding process for the same services. In addition, you state the university has not executed a final agreement relating to the current bidding process. You

contend release of the submitted information at this time would “place the [u]niversity at a competitive disadvantage” and “compromise the [u]niversity’s ability to negotiate” the ongoing bid “by revealing the financial terms and other relevant contractual considerations[.]” After review of the submitted information and consideration of the arguments, we find the university has established the release of the submitted information 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.¹

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 588683

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Alastair Brennan
Director of Operations
Fonemed, LLC
3 Lincoln Drive, Suite A
Ventura, California 93001
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.