



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

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

OR2015-26075

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# 590340 (OGC# 164624, 164999, and 165992).

The University of Texas at Arlington (the "university") received three requests from two requestors for information pertaining to request for proposals number 2015-008, Resident Hall Network Services. You state the university does not have information pertaining to a portion of one of the requests.¹ You claim the requested 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 third parties. Accordingly, you state, and provide documentation showing, you notified Apogee Telecom, Inc.; Elauwit Networks; Korcett Holdings ("Korcett"); Pavlov Media, Inc.; and Time Warner Cable ("Time Warner") of the request for information and of their 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

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

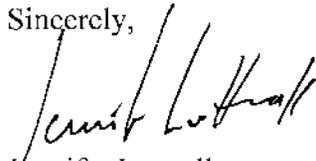
explain applicability of exception in the Act in certain circumstances). We have received comments from Korceff and Time Warner. We have considered the submitted arguments and reviewed the submitted information.

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, 841 (Tex. 2015). You represent the information pertains to an ongoing competitive bidding situation. In addition, you state a winning bidder has not been selected and no contract has been executed. You assert releasing the submitted information would harm the university’s ability to negotiate the best possible terms for the contract because bidders could contact each other and potentially influence the prices or transactions that are ultimately executed with the university. 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.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

²As our ruling on this information is dispositive, we need not address the third parties’ arguments against disclosure.

Ref: ID# 590340

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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