



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2015

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

OR2015-26751

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# 591191 (OGC# 164550).

The University of Texas System (the "system") received a request for a copy of any proposals, responses, contracts, and internal analyses pertaining to Civitas Learning, Inc. ("Civitas"). You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Civitas. Accordingly, you state, and provide documentation showing, you notified Civitas 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 considered the exceptions you claim and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Civitas explaining why the submitted information should not be released. Therefore, we have no basis to conclude Civitas has a protected proprietary interest in the

submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest Civitas may have in the information.

Next, the system informs us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-21461 (2015). In that ruling, we determined the system must withhold some information under section 552.139 of the Government Code and must release the remaining responsive information. You inform us the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the system must continue to rely on Open Records Letter No. 2015-21461 as a previous determination and withhold or release the identical information at issue, which you have marked, in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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*, No. 12-1007, 466 S.W.3d 831 (Tex. 2015). You represent the information you have marked pertains to a competitive bidding situation. You state, although a winning bidder has been selected, no contract has yet been executed. You assert release of the information at issue would disadvantage the system in obtaining a fair contract should negotiations fail with the winning bidder. After review of the information at issue and consideration of the arguments, we find the system has established the release of this information would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information you have marked under section 552.104(a) of the Government Code.¹

Section 552.139 of the Government Code provides, in part, as follows:

- (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

...

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(2). Section 2059.055(b) of the Government Code provides the following, in pertinent part:

Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). The system asserts the remaining information it has marked contains detailed information regarding the processes to “securing data, assessing vulnerabilities to its network and remediation to data security breaches.” Based on your representation and our review, we find the information the system has marked relates to computer network security, and the design, operation, or defense of the system's computer network. Accordingly, the system must withhold the information you have marked under section 552.139(a) of the Government Code.

In summary, the system must continue to rely on Open Records Letter No. 2015-21461 as a previous determination and withhold or release the information you have marked in

accordance with that ruling. The system may withhold the information you have marked under section 552.104(a) of the Government Code. The system must withhold the information you have marked under section 552.139(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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 591191

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Charles Thornburgh
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Austin, Texas 78703
(w/o enclosures)