



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 24, 2016

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

OR2016-04425

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# 599377 (OGC Nos. 166386 and 166859).

The University of Texas Medical Branch at Galveston (the "university") received two requests from the same requestor for a specified contract. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Aztec Facilities Services, Inc. ("Aztec") and Sodexo Services ("Sodexo"). Accordingly, the university states, and provides documentation showing, it notified the third parties 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 explain applicability of exception in the Act in certain circumstances). We have received comments from Sodexo. We have considered the submitted arguments and reviewed the submitted information.

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 Aztec

explaining why the submitted information should not be released. Therefore, we have no basis to conclude Aztec 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest Aztec may have in the information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain the detailed floor plans of the university’s facilities contain the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. You state the floor plans at issue depict “the entrances and exits, the presence or absence of security stations, and locations of the mechanical and electrical features of the [u]niversity’s administrative facilities and hospitals[.]” You further state the university facilities at issue “facilitate the provision of routine and emergency medical care, as well as the education and training of medical professionals.” Therefore, you assert, and we agree, the facilities at issue are critical infrastructure. *See generally id.* § 421.001 (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). You explain that if this information was released, the facilities would be susceptible to criminal actors who could use the detailed floor plans to undermine the collective efforts of the university, the

University of Texas System, and other law enforcement agencies to safeguard the welfare of those providing medical training, education, and care and the patients being treated. You further state release of this information would expose the vulnerabilities to the university's critical infrastructure and undermine the security of the university as a whole. Based on your representations and our review, we find the university has demonstrated the release of the information at issue would identify the technical details of particular vulnerabilities of the university to an act of terrorism. Thus, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 state the information you have marked relates to existing contracts executed by the university. However, you explain the university is currently in an ongoing request for proposals ("RFP") bidding process for the same services. Further, you state the university has not executed a final agreement relating to the current RFP process. You contend release of the information at issue at this time would disadvantage the university's ability to obtain fair contracts related to the ongoing RFP. Based on your representations and our review, we conclude the university may withhold the information you have marked under section 552.104 of the Government Code.

Sodexo also raises section 552.104 of the Government Code for some of its information. Sodexo states it has competitors. In addition, Sodexo states release of the information it has marked could be used by its competitors to underbid Sodexo in future business thus adversely impacting Sodexo's negotiating position for other business opportunities. After review of the information at issue and consideration of the arguments, we find Sodexo 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 information at issue under section 552.104(a).<sup>1</sup>

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The university may withhold the information you have marked and the information Sodexo has marked under section 552.104 of the Government Code. The university must release the remaining information.

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<sup>1</sup>As our ruling is dispositive, we need not address Sodexo's remaining arguments against disclosure of this information.

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](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/akg

Ref: ID# 599377

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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