



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 16, 2016

Ms. Ana Vieira Ayala  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2016-06117

Dear Ms. Ayala:

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# 601749 (UT OGC # 166815).

The University of Texas at Austin (the "university") received a request for a specified contract as well as all additional athletic department contracts being paid for by a specified entity, including employees working for the university on behalf of another named entity. You state you have released some information.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of IMG College and Earl Miller Productions, Inc. ("Earl Miller"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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

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<sup>1</sup>We note, and the university acknowledges, it failed to comply with section 552.301 of the Government Code in requesting a ruling. Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See Gov't Code §§ 552.007, .302.* Thus, we will consider whether the submitted information must be withheld under the Act on that ground.

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 Earl Miller. 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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Earl Miller states it has competitors. In addition, Earl Miller states the submitted information includes its “rate information, pricing information, and strategic information” and that its disclosure “would give advantage to a competitor or bidder.” After review of the information at issue and consideration of the arguments, we find Earl Miller 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).<sup>2</sup>

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

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<sup>2</sup>As our ruling is dispositive, we need not address Earl Miller’s remaining arguments against disclosure of the submitted information.

Ref: ID# 601749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Emily M. Mooring  
Associate General Counsel  
IMG College  
546 East Main Street  
Lexington, Kentucky 40502  
(w/o enclosures)

Earl Miller Productions, Inc.  
c/o Ms. Kelly Latz  
Fritz, Byrne, Head & Fitzpatrick, P.L.L.C.  
221 West Sixth Street, Suite 960  
Austin, Texas 78701  
(w/o enclosures)