



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2016

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2016-07736

Dear Ms. Tynan:

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# 604818 (OGC# 167358).

The University of Texas Medical Branch at Galveston (the "university") received three requests from different requestors for a specified bid tabulation. 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 Burgoon Company; Douglas Equipment; FMW Distributors, Inc.; Global Coffee Company ("GCC"); Great Lakes Hotel Supply Company; ISA Commercial Refrigeration; Jeans Restaurant Supply; Mountain Pass Coffee Company; and Sam Tell & Son, Inc. Accordingly, you state, and provide documentation showing, you notified the 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 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 GCC. We have reviewed the submitted information and the submitted arguments.

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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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 university may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

GCC claims its information is protected under section 552.104 of the Government Code, which 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. GCC states it has competitors. In addition, GCC states release of its information would allow such competitors to price their products in such a way that it would negatively affect GCC. After review of the information at issue and consideration of the arguments, we find GCC has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the university may withhold the information we have marked under section 552.104(a) of the Government Code.¹ As no further exceptions to disclosure have been raised, the university must release the remaining 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, 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 Behnke
Assistant Attorney General
Open Records Division

JB/som

¹As our ruling is dispositive, we need not consider GCC’s remaining argument against disclosure.

Ref: ID# 604818

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

Ms. Yolanda Gomez
Burgoon Company
c/o Cynthia Tynan
Attorney
& Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Mr. Tyler Barker
FMW Distributors, Inc.
c/o Cynthia Tynan
Attorney
& Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Mr. David Israel
Great Lakes Hotel Supply Co.
2401 West 9 Mile Road
Southfield, Michigan 48033
(w/o enclosures)

Ms. Jennifer Stasheen
Douglas Equipment
c/o Cynthia Tynan
Attorney & Public Information
Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Mr. Shaheed Momin
Global Coffee Company
6161 Savoy Drive, Suite 821
Houston, Texas 77036
(w/o enclosures)

Ms. Patricia Morris
ISA Commercial Refrigeration
Cynthia Tynan
Attorney & Public Information
Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Ms. Elvia Salazer-Castro
Tari, Inc.
Jeans Restaurant Supply
c/o Cynthia Tynan
Attorney
& Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Mr. Fred Smilow
Sam Tell & Son, Inc.
c/o Cynthia Tynan
Attorney
& Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Ms. Rita Aguilar
Mountain Pass Coffee Company
P.O. Box 971518
El Paso, Texas 79997
(w/o enclosures)