



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 27, 2016

Ms. Cynthia Tynan  
Attorney and Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street, Suite 600  
Austin, Texas 78701-2901

OR2016-09514

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# 608228 (OGC# 167799).

The University of Texas Health Science Center at Houston (the "university") received a request for information pertaining to a specified bid solicitation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of NetIQ Corp. ("NetIQ"). Accordingly, you state, and provide documentation showing, you notified NetIQ 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 reviewed the submitted information.

Initially, we note you have only submitted the contract award pertaining to the specified bid solicitation. Thus, to the extent additional responsive information exists and was maintained by the university on the date the university received the request for information, we presume the university has released it. If not, the university must do so. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, 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 NetIQ explaining why its information should not be released. Therefore, we have no basis to conclude NetIQ 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 any of the information at issue on the basis of any proprietary interest NetIQ may have in it. As no exceptions to disclosure have been raised, the submitted information must be released.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 608228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)