



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2016-09784

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# 608018 (UT OGC# 167798).

The University of Texas at Tyler (the "university") received a request for a specified contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Aramark Educational Services, LLC ("Aramark"). Accordingly, you state, and provide documentation showing, you notified Aramark 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 submitted arguments and reviewed the submitted information.

We note the submitted information may have been the subject of a previous request for information, the result of which this office issued Open Records Letter No. 2010-13462 (2010). In that ruling, we determined, the university may not withhold any of the information at issue under section 552.110 of the Government Code, and the information at issue must be released. We have no indication the law, facts, and circumstances on which this ruling was based have changed. However, we note the university now seeks to withhold the information at issue under section 552.104 of the Government Code. Section 552.007 of the

Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the university may not now withhold any previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Although the university raises section 552.104 of the Government Code for the submitted information, this exception does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the university may not now withhold any previously released information under section 552.104 of the Government Code. Accordingly, with regard to the information in the present request that is identical to information previously ruled upon by this office, the university must continue to rely on Open Records Letter No. 2010-13462 as a previous determination and release the identical information in accordance with that ruling. *See* ORD 673. To the extent the information in the present request was not at issue in this previous ruling, we will address the university's argument against 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*, 466 S.W.3d 831 (Tex. 2015). You acknowledge the submitted information relates to an existing contract executed by the university. However, you explain the university currently has a request for proposals ("RFP") for the same services underway and is accepting bids. You contend release of the submitted information at this time would "disadvantage the [u]niversity in obtaining a fair contract." After review of the submitted information and consideration of the arguments, we find the university has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.

In summary, to the extent the information in the present request is identical to information previously ruled upon by this office, the university must continue to rely on Open Records Letter No. 2010-13462 as a previous determination and release the identical information in accordance with that ruling. To the extent the information in the present request was not at issue in this previous ruling, the university may withhold the submitted information under section 552.104(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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 608018

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)