



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2016

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-11949

Dear Ms. Nicholson:

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# 611740.

The City of Austin (the "city") received a request for nine categories of information pertaining to the Golden-cheeked Warbler. 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 the Department of Fisheries and Wildlife Sciences at the University of Missouri (the "university"). Accordingly, you indicate you notified the university of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. We have received arguments from the university. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions claimed and reviewed the submitted information.

The university asserts the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) 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*, No. 466 S.W.3d 831 (Tex. 2015) at 841. The university asserts it has

competitors. In addition, the university states the information at issue, if released, would permit others to “exploit [the university’s] work,” put the university at a competitive disadvantage, and impose “substantial harm in diminishing the value of the data that [the university] worked to obtain.” After review of the information at issue 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 city may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 611740

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.