



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2016

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701

OR2016-15009

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# 616524 (OGC No. 169081).

The University of Texas at Tyler (the "university") received a request for contract award information pertaining to a specified bid and the resulting proposal tabulation form. You state the university released some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of ABM Janitorial Services-Southeast, L.L.C.; Andrews Building Service, Inc.; Aramark Management Services, L.P.; Entrust One Facility Services, Inc.; GCA Education Services of Texas, Inc.; Kellermeier Bergensons Services, L.L.C.; Marcis & Associates, Inc.; Olympus Building Services, Inc. ("Olympus"); SBM Management Services, L.P.; Soji Services d/b/a Metroclean; SSC Service Solutions; ServiceMaster Clean by Eagle Maintenance Co., Inc.; and Unicare Building Maintenance, Inc.¹ Accordingly, you notified these third parties of the

¹We note, and you acknowledge, the university did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider whether the information at issue must be withheld under the Act.

request for information and of each company's 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 Act in certain circumstances). We have received comments from Olympus. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Olympus explaining why the company's submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); 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 portion of the submitted information on the basis of any proprietary interests the remaining third parties may have in it.

Olympus raises section 552.104 of the Government Code. 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. Olympus states it has competitors. In addition, Olympus states release of its information would provide an advantage to its competitors. Accordingly, we find Olympus has established the release of the information at issue would give advantage to a competitor or bidder. We conclude the university may withhold the information related to Olympus under section 552.104(a) of the Government Code.² 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/>

²As our ruling is dispositive, we need not address Olympus's remaining argument against disclosure.

[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,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

Ref: ID# 616524

Enc. Submitted documents

c: Requestor
(w/o enclosures)

13 Third Parties
(w/o enclosures)