



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 22, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701

OR2016-16532

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# 619605 (OGC# 169423).

The University of Texas System (the "system") received a request for responses to the RFQ and RFP for OFPC 302-905. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of specified third parties might be implicated. Accordingly, you notified Linbeck; Turner Construction; Beck; J.T. Vaughn Construction, LLC; JE Dunn Construction; and Manhattan Construction of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Beck. We have considered the submitted arguments and reviewed the submitted information.

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 only received comments from Beck 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 system may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Beck raises section 552.104(a) of the Government Code for its submitted information, which 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, 841 (Tex. 2015). A private third party may invoke this exception. *Id.* Beck states it has competitors. Further, Beck states disclosure of its submitted information would give its competitors a competitive advantage. Moreover, Beck informs us disclosure of the information at issue would allow competitors to calculate and undermine Beck’s future bids. After review of the information at issue and consideration of the arguments, we find Beck has established the release of its submitted information would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold Beck’s submitted information under section 552.104(a). The remaining 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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/dls

Ref: ID# 619605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)