



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2016

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

OR2016-20267

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# 625648 (OGC# 170133, 170661).

The University of Texas System (the "system") received two separate requests for information pertaining to a specified request for proposals, one requesting the final contract awarded. You state the system does not yet have a final contract.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Consolidated Communications, Inc. ("Consolidated"); Level 3 Communications, Inc. ("Level 3"); Lonestar Education and Research Network ("LEARN"); Time Warner Cable Business Class; and Windstream. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 received comments from Consolidated and Level 3. We considered the submitted arguments and reviewed the submitted information.

Initially, we note Level 3 seeks to withhold information not submitted to this office by the system. By statute, this office may only rule on the public availability of information

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

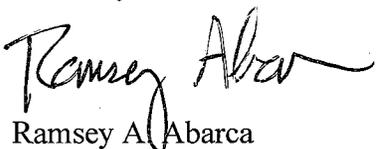
submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the system, this ruling does not address this information and is limited to the information submitted as responsive by the system.

The system raises section 552.104(a) of the Government Code for the 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). You represent the submitted information pertains to a competitive bidding situation. Further, you state the system and the winning bidder have not yet finalized an agreement. Moreover, you inform us release of the submitted information would place the system at a competitive disadvantage in finalizing an agreement with the winning bidder. After review of the information at issue and consideration of the arguments, we find the system has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a).²

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,



Ramsey Abarca
Assistant Attorney General
Open Records Division

RAA/dls

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 625648

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)