



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2012

Ms. Neera Chatterjee  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-09626

Dear Ms. Chatterjee:

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# 457370 (OGC# 142979).

The University of Texas System (the "system") received a request for the vendor responses and final contracts relating to RFP # ESBDD Req BOR-07-08-11 (online education services). You claim some of the requested information is excepted from disclosure under section 552.104 of the Government Code. You do not take a position as to whether the remaining information is excepted from disclosure under the Act. However, you state you notified the following third parties of the systems' receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor: Academic Partnerships, LLC; Blackboard, Inc.; Colloquy; Instructional Connections, Inc.; and Pearson Learning Solutions. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 reviewed the submitted arguments and information.

You inform us the submitted information pertaining to Academic Partnerships, LLC and Instructional Connections, Inc. was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-08625 (2012). In that ruling, we determined the system must release the submitted information in accordance with copyright law. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the system must continue to rely on Open Records Letter

No. 2012-08625 as a previous determination and release this information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert the information pertaining to Blackboard, Inc. and Pearson Learning Solutions, which you have marked, is excepted from disclosure under section 552.104 of the Government Code, which excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the information at issue relates to a request for proposals. You inform us bidding has been closed on the RFP at issue and a winning bidder has been selected. You also state the system has not reached a final agreement with the winning bidder. You explain that, if the system and the winning bidder fail to agree on terms, the system may have to choose the other bidder. Further, you state if the remaining bidder does not satisfy the system's needs, the system will issue a new RFP to expand the vendor pool. You contend release of the submitted information would place the system at a competitive disadvantage in future negotiations for these services and harm the system's ability to negotiate a final agreement. Based on your representations and our review, we conclude the system may withhold the information you have marked under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

Finally, 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Colloquy has not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of that company, and the system may not withhold any portion of the submitted information on that basis. *See* 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

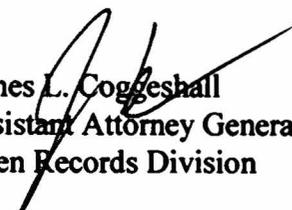
would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

To conclude, the system must release the submitted information pertaining to Academic Partnerships, LLC and Instructional Connections, Inc. in accordance with Open Records Letter No. 2012-08625. The system may withhold the information you have marked under section 552.104 of the Government Code. The system 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 457370

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. William Durham  
Colloquy  
Suite 400  
6600 North Andrews Avenue  
Fort Lauderdale, Florida 33309  
(w/o enclosures)

Mr. Dan Frazzini  
Executive Director  
Pearson Learning Solutions  
2154 East Commons Avenue, Suite 4000  
Centennial, Colorado 80122  
(w/o enclosures)

CFO  
Academic Partnerships, LLC  
160 Continental Avenue  
Dallas, Texas 75207  
(w/o enclosures)

Mr. Robert Williams  
Instructional Connections, Inc.  
1708 Cliffrose Lane  
Lewisville, Texas 75067  
(w/o enclosures)

ATTN: Legal Department  
Academic Partnerships, LLC  
2200 Ross Avenue, Suite 3800  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Andrew Wisner  
Strategic Account Executive  
6<sup>th</sup> Floor  
650 Massachusetts Avenue N.W.  
Washington, DC 20001-3796  
(w/o enclosures)