



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Fernando C. Gomez, J.D., Ph.D.  
Vice Chancellor and General Counsel  
The Texas State University System  
208 East 10th Street, Suite 600  
Austin, Texas 78701-2407

OR2016-07795

Dear Dr. Gomez:

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# 604749.

The Texas State University System (the "system") received a request for the qualifications and pricing proposals submitted by named companies in response to a specified request for qualifications.<sup>1</sup> Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified Balfour Beatty Construction, L.L.C. ("Balfour"), SpawGlass Construction Corporation ("SpawGlass"), and The Whiting-Turner Construction Company ("Whiting-Turner") of the request for information and of their right 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 Balfour. We have reviewed the submitted information and the submitted arguments.

Initially, 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

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<sup>1</sup>You inform us, because the system and J.T. Vaughn Construction, L.L.C. ("Vaughn") have reached an agreement with the requestor regarding the redaction and release of Vaughn's information, the system is not seeking a ruling on information pertaining to Vaughn. You state the system will promptly release the information with the agreed redactions.

this letter, we have not received comments from SpawGlass or Whiting-Turner explaining why their information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest 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 system may not withhold the submitted information on the basis of any proprietary interest SpawGlass or Whiting-Turner may have in the information.

Next, Balfour seeks to withhold information the system did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the system. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Balfour states it has competitors. In addition, Balfour states release of portions of its information would provide competitors with a distinct advantage, allowing them “to match or undercut [Balfour] in its efforts to win future constructions projects.” After review of the information at issue and consideration of the arguments, we find Balfour has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we marked under section 552.104(a).<sup>2</sup> As no further exceptions to disclosure have been raised, 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.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

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<sup>2</sup>As our ruling is dispositive, we need not address Balfour’s remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

Ref: ID# 604749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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