



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2016

Ms. Ana Vieira Ayala
Senior Attorney and Public Information Coordinator
University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-24340

Dear Ms. Ayala:

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# 632708 (OGC# 171482).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to the university's advertising and marketing agency request for proposal. You state the university does not have information responsive to parts of the request.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests Marion Montgomery, Inc. ("MMI"); The Richards Group ("TRG"); and Hungry Heart Media, Inc. dba Wondros ("Wondros"). 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

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).

received comments from TRG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the university need not release non-responsive information to the requestor.

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 not received comments from MMI or Wondros explaining why the submitted information should not be released. Therefore, we have no basis to conclude MMI or Wondros has protected proprietary interests 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 university may not withhold the submitted information on the basis of any proprietary interest MMI or Wondros may have in the information.

We also note the submitted information consists of contracts for the purchase of services from a private vendor that are subject to the posting requirements in section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted contracts, each valued at more than \$15,000, are between the university, which is a state agency, and private vendors for the purchase of services, and the contracts are not expired or completed. *See id.* §§ 2261.002(2) ("State agency" has meaning assigned by Gov't Code § 2151.002), 2151.002(3) ("State agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the submitted contracts are required to be posted on the university's internet website. Although TRG seeks to withhold portion of the submitted information under section 552.104 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records

Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the university must release the submitted information at issue in its entirety.

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 A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 632708

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)