



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2016

Ms. Cynthia Tynan  
Attorney & Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2901

OR2016-19244

Dear Ms. Tynan:

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# 624203 (OGC# 170033).

The University of Texas Health Science Center at San Antonio (the "university") received a request for a specified letter of intent. The university claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have received comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, the requestor's representative asserts the submitted information should have been released in response to a previous request for information made to the university by the requestor. However, from our review of the documentation submitted by the requestor's representative, the university informed the requestor the submitted information did not exist at the time the university received the previous request. Whether the requested information existed at the time of the previous request is a question of fact this office cannot resolve in the open records ruling process. Thus, we must rely upon the facts alleged to us by the governmental body, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision Nos. 554 (1990), 552 (1990). We note the 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). Accordingly, we will address the university's arguments against disclosure of the submitted information.

Section 552.104(a) of the Government Code exempts 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 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university is competing as a healthcare provider "in the market for research and development of medical breakthroughs and technology, medical/academic training programs, and the provision of hospital and clinical health care services." In addition, the university states the information at issue "consists of a non-binding letter of intent, containing the strategies and future plans that reveal details of [a] potential partnership" and release of the information would allow competitors to become privy to "the strategies, negotiations, and plans for expansion/growth discussed between the [u]niversity and its partner in [the] venture." After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 624203

Enc. Submitted documents

c: Requestor  
(w/o enclosures)