



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-19534

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# 624424 (OGC# 169872).

The University of Texas System (the "system") received a request for communications between the University of Texas Horizon Fund (the "fund") and any member of the system's Board of Regents during a specified time period.¹ You state the system will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.107, 552.111, and 552.143 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Accordion Health; Admittance Technologies, Inc. ("ATI"); Aeglea BioTherapeutics; Alafair Biosciences; Apollo Endosurgery; Cardiovate, Inc.; Cerevast

¹You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Therapeutics; Decisio Health (“Decisio”); EMIT Corporation (“EMIT”); FibeRio; Invictus Medical; Latakoo, Inc. (“Latakoo”); Lung Therapeutics; Lynx Laboratories; M87; MicroTransponder; Molecular Match; Plx Pharma, Inc.; and Rapamycin Holdings, Inc. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 ATI, Decisio, EMIT, and Latakoo. We have reviewed the submitted information and the submitted arguments.

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). You explain the fund provides venture capital to entrepreneurs in an effort to realize a positive return on its investments. The system states it has specific marketplace interests in the information at issue because the system competes with other investors for investment opportunities and strategic relationships with entrepreneurs, business leaders, scientific experts, and third-party co-investors. In addition, the system states release of the submitted information would place the system and the fund at a significant disadvantage in their ability to negotiate the terms of investments and partnerships. The system states if the information were released, other investors, and startup companies in which the fund might invest, would have access to the fund’s strategies, analysis and forecasts, undermining the fund’s negotiating position and its ability to protect its investments. After review of the information at issue and consideration of the arguments, we find the system 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 submitted information under section 552.104(a) of the Government Code.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/>

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

[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,

A handwritten signature in black ink that reads "Claire Morris Sloan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 624424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

19 Third Parties
(w/o enclosures)