



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 21, 2017

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

OR2017-03753

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# 646314 (UT OGC# 172979).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for all contracts, terms of conditions, letters of understanding, data use agreements, data transfer agreements or other similar documents concerning Foundation Medicine, Inc. ("FMI") in relation to clinical trials or routine clinical care. The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, the university informs us release of this information may implicate the proprietary interests of FMI. Accordingly, the university states, and provides documentation showing, it notified FMI of the request for information and of its 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 considered the exceptions the university claims and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts 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 with other universities, research institutions, and pharmaceutical companies, all of which are researching, testing, and creating oncology treatments. In addition, the university states release of the submitted information would cause specific harm to the university’s marketplace interests, affecting its ability to fund and offer the clinical services and products necessary for expanding medical, academic, and other related facilities. Further, the university asserts disclosure of the submitted information could result in the loss of revenue by allowing competing entities to obtain the university’s research and intellectual property. 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.<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we need not address the university’s remaining argument against disclosure.

Ref: ID# 646314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)