



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2017

Mr. Ronny H. Wall
Associate General Counsel
Texas Tech University System
P.O. Box 42031
Lubbock, Texas 79409

OR2017-21239

Dear Mr. Hall:

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# 676470.

Texas Tech University (the "university") received a request for information pertaining to the university's plans for a veterinary school. You state you do not have some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2016-05260 (2016), this office ruled the university may withhold information under section 552.104 of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon, the university must continue to rely on Open Records Letter No. 2016-05260 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or

is not excepted from disclosure). However, to the extent the submitted information is not encompassed by the prior ruling, we will consider the exception you raise.

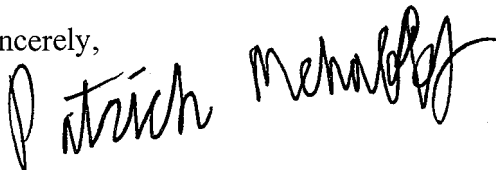
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university is competing with other universities for a veterinary program that could result in millions of dollars in tuition money and research funding. In addition, the university states releasing the information at issue would give competitors the edge in “co-opting or even blocking [the university’s] efforts to establish” the program. After review of the information at issue and consideration of the arguments, we find the university established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a).

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the university must continue to rely on Open Records Letter No. 2016-05260 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. To the extent the submitted information is not encompassed by the prior ruling, 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, 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, appearing to read "Patrick P. Mehaffy". The signature is written in a cursive style and is positioned to the right of the typed name.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 676470

Enc. Submitted documents

c: Requestor
(w/o enclosures)