



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2018

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-04614

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# 697667 (OGC# 178575, 178809 & 178857).

The University of Texas System (the "system") received three requests from two requestors for specified information pertaining to entities involved in a certain project. You state the system does not have information responsive to portions of the third request.¹ 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. We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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*

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Co. v. Paxton, 466 S.W.3d 831 (Tex. 2015). You state the system has specific marketplace interests in the submitted information because it relates to an ongoing competitive bidding situation regarding the operation of a specified laboratory. You state a winning bidder has not been selected, and no contracts have been awarded. In addition, you state the information at issue reveals strategic decisions regarding the system's proposal, and its expertise and ability to operate the laboratory at issue. Further, you assert release of this information would undermine the system's bidding and negotiating positions against other public and private entities in the current bidding process. After review of the information at issue and consideration of the arguments, we find you have 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.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 697667

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)