



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2019

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

OR2019-09098

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# 757856 (OGC No. 186691).

The University of Texas System (the "system") received a request for all documents pertaining to any surface lease agreements between the system's University Lands and a named third party pertaining to eight specified tracts. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Recurrent Energy ("Recurrent"). Accordingly, you state, and provide documentation showing, you notified Recurrent of the request for information and of its 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 considered the exception you claim 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). You state the system has specific marketplace interests in the information at issue because it is competing with private land owners. You explain the system's University Lands ("UL") manages the surface and mineral interests of land in Texas for the benefit of the Permanent University Fund. You state "UL is currently

engaged in ongoing efforts to lease surface interests for the purposes of development, construction, operation, maintenance and decommissioning of solar energy resources.” You explain the information at issue pertains to one of the first of many expected surface leases for solar resources and the system expects to issue requests for proposals for solar resources on a recurring basis in the future. Thus, you argue release of the information at issue would harm the system’s interests in “effectuating future leases and give advantage to bidders seeking to lease lands from the system” for these purposes. In addition, you state disclosure would allow third parties to be privy to the system’s terms and pricing with respect to this type of lease and place the system at a disadvantage against potential competing private land owners. 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.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 757856

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)