



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2019

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

OR2019-24409

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# 783368 (OGC# 191229).

The University of Texas at Austin (the "university") received a request for specified contracts pertaining to the university's football program personnel and non-conference games for a specified time period. You state you have released some 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. We have also received and considered comments from the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-09022 (2019). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the university may rely on Open Records Letter No. 2019-09022 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 prior attorney

general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, the requestor's attorney asserts the university previously released some of the submitted information to the requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you raise section 552.104 of the Government Code for this information, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, to the extent the university voluntarily released any of the submitted information to the public, the university may not now withhold such information under section 552.104 but must instead release it. However, to the extent the university has not voluntarily released any of the submitted information to the public, we will consider your argument under section 552.104 of the Government Code.

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 university has specific marketplace interests in the information at issue because the university competes with other universities for football games and is thus, a competitor in this marketplace. Additionally, you state release of the submitted information would enable the university's competitors to undercut the university's negotiating position, and therefore, release of the submitted information would hamper the university's ability to enter into future agreements. Upon review of the submitted information and consideration of the arguments, we find you have established release of the submitted information 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.

In summary, the university may rely on Open Records Letter No. 2019-09022 as a previous determination and withhold or release the information previously ruled on in accordance with that ruling. To the extent the university voluntarily released any of the submitted information to the public, the university must release it. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

  
Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 783368

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)