



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 8, 2019

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

OR2019-31621

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# 795955 (OGC# 192427).

The University of Texas System (the "system") received a request for copies of all solar leases involving the system. 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 submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-09098 (2019). You inform us there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the system may rely on Open Records Letter No. 2019-09098 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).

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

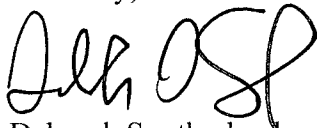
information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the system has specific marketplace interests in the information at issue because it is competing with private land owners. You explain the system’s University 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 surface leases for solar resources and the system expects to lease surface interests for similar purposes 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 in the future. In addition, you state disclosure would allow third parties to know the system’s terms and pricing for these leases 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 remaining information under section 552.104(a) of the Government Code.

In summary, the system may rely on Open Records Letter No. 2019-09098 as a previous determination and withhold or release the identical information in accordance with that ruling. The system may withhold the remaining 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,



Deborah Southerland  
Attorney  
Open Records Division

DS/rm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)