



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2020

Mr. Ronny H. Wall
Senior Associate General Counsel
Texas Tech University System
P.O. Box 45031
Lubbock, Texas 79409-5031

OR2020-01311

Dear Mr. Wall:

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# 805386.

Texas Tech University (the "university") received a request for information pertaining to a specified university program.¹ You state you will release some information. The university states it does not maintain information responsive to a portion of the request.² 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.

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

¹ You state the university sent the requestor estimates of charges pursuant to section 552.2615 of the Government Code. See Gov't Code § 552.2615. You inform us the requestor modified his request in response to the cost estimates. See *id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²The 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), 452 at 3 (1986), 362 at 2 (1983).

“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 assert the university has specific marketplace interests in submitted information under section 552.104 because the university competes against other institutes of higher education for securing tuition and student populations. You state release of submitted information would provide the university’s competitors teaching the same certification program with an advantage and harm the university. Based on these representations and our review, we find you demonstrated the university has specific marketplaces interests and release of the information at issue would give advantage to a competitor or bidder. Accordingly, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/rm

Ref: ID# 805386

Enc. Submitted documents

c: Requestor
(w/o enclosures)