



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2020

Mr. Nathan Christopher
Assistant General Counsel
Texas Tech University System
3601 4th Street, Suite 2B-137, Mail Stop 6246
Lubbock, Texas 79430-6246

OR2020-06978

Dear Mr. Christopher:

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# 815446.

The Texas Tech University Health Sciences Center (the "university") received a request for information pertaining to specified contracts. The university claims the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, the university states release of the submitted information may implicate the proprietary interests of Management & Training Corporation ("MTC") and the Health and Human Services Commission (collectively, the "third parties"). Accordingly, the university states, and provides documentation showing, it notified the third parties of the request for information and of the 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 received comments from MTC. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and considered the submitted arguments.

The university and MTC assert, and we agree, 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. 2019-32665 (2019). In that ruling, we concluded the university may withhold the information at issue under section 552.104(a) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Thus, the university may rely on Open Records Letter No. 2019-32665 as a previous determination and withhold 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). We understand the university has specific marketplace interests in the information at issue because the university is competing with other entities for the provision of healthcare services. In addition, the university states release of this information would “provide [a] significant advantage to [the university’s] competitors” by allowing its competitors to obtain the university’s “compensation model and other proprietary business details under which the [healthcare] services are provided.” Upon review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the remaining information under section 552.104(a) of the Government Code.¹

In summary, the university may rely on Open Records Letter No. 2019-32665 as a previous determination and withhold the identical information in accordance with that ruling. The university 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

¹ As our ruling is dispositive, we need not address the remaining submitted arguments for this information.

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,

A handwritten signature in black ink, appearing to read 'Alex Burks', with a long horizontal flourish extending to the right.

Alexandra C. Burks
Attorney
Open Records Division

ACB/rm

Ref: ID# 815446

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)