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ATTORNEY GENERAL OF TEXAS

April 6, 2020

Mr. Lindsey Bartula
Assistant General Counsel
University of North Texas System
Mail Account #62048
1155 Union Circle #310907
Denton, Texas 76203

OR2020-10359

Dear Mr. Bartula:

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# 822099 (Ref. No. 1704).

The University of North Texas System (the "system") received a request for the brand audit conducted by a specified vendor. 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 representative sample of information.¹

Initially, you inform us the submitted information was ruled upon in Open Records Letter No. 2019-13855 (2019). In that ruling, we determined the system may withhold the information at issue pursuant to section 552.104 of the Government Code. However, after the issuance of that ruling, the Eighty-sixth Legislature amended section 552.104, effective January 1, 2020. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Thus, the relevant law has changed since the issuance of that previous ruling and the system may not rely upon our previous ruling as a previous determination. *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 the same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not

¹ This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

excepted from disclosure). Therefore, we will address your arguments against disclosure for the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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, 841 (Tex. 2015). You assert the system has specific marketplace interests in the submitted information because the system and each of its component institutions compete for, among other things, research funding. You explain the marketplace for research funding is “highly competitive” and release of the information at issue would reveal the system’s strengths and weaknesses to competitors. You argue disclosure will provide the system’s competitors a competitive edge in co-opting or blocking the system’s efforts to meet the necessary criteria to access the types of funding at issue. Based on your representations and our review, we find you have demonstrated the system has specific marketplaces interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the submitted information would give an advantage to a competitor or bidder. Accordingly, the system may withhold the submitted information under section 552.104(a).

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,

Michelle Garza
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)