



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2020

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-14446

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# 829992 (OGC# 195629).

The University of Texas at Arlington (the "university") received two requests from the same requestor for rental price information pertaining to a specified location.¹ 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.²

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

¹ The university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 state the submitted information relates to the university’s College Park District (the “district”), which “is the [u]niversity’s 20 acre, \$160 million mixed-use development.” Additionally, you state, “[i]n order to attract student and community visitors and generate [re]venue from the [d]istrict on behalf of the [u]niversity, the [u]niversity must contract with tenants to lease retail space within the [d]istrict.” Therefore, you assert the university has specific marketplace interests in the information at issue because it routinely “competes with other mixed-use developments to attract tenants and shoppers and is, thus, a competitor in this marketplace.” You argue release of the information at issue would provide a competitive advantage by giving “other mixed-use development[s] the information they need to tailor their lease agreements specifically to provide more favorable terms than the [u]niversity.” Based upon your representations and our review, we find you have demonstrated the university has specific marketplace 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 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 829992

Enc. Submitted documents

c: Requestor
(w/o enclosures)