



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 14, 2020

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

OR2020-25879

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# 848584 (OGC# 198139).

The University of Texas System (the "system") received a request for information related to specified lease agreements. The university claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. The system also states release of the submitted information may implicate the proprietary interests of Appaloosa Run, LLC; Indian Mesa Wind, LLC; White Mesa Wind, LLC; and Woodward Mountain Wind, LLC. Accordingly, the system states, and provides documentation showing, it notified these third parties of the request for information and of their 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 considered the claimed exception and reviewed 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). The system states it has specific marketplace interests in the

information at issue because it is competing with private land owners. The system explains University Lands (“UL”) manages the surface and mineral interests of land in Texas for the benefit of the Permanent University Fund. The system states “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.” The system explains the information at issue pertains to a surface lease for wind energy and the system issues requests for proposals for wind energy and renewable power development resources on a recurring basis. Thus, the system argues 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]” for these purposes. In addition, the system states disclosure would allow third parties to be privy to the system’s terms and pricing with respect to this type of lease and place the system at a disadvantage against potential competing private land owners. Based upon these representations and our review, we find the system has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the system has demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, system 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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/eb

Ref: ID# 848584

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)