



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2020-29204

Dear Ms. Burnett:

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# 855185 (OGC# 198620).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to a specified agreement and e-mails between two specified domains during a specified time period.¹ You claim the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹ We note the university asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We assume 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.

issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 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 university states it has specific marketplace interests in the information at issue because the university is competing with other universities, research institutions, and medical facilities, which offer similar medical services and are conducting research to develop similar treatments and products. In addition, the university states release of the submitted information would cause specific harm to the university’s marketplace interests, affecting its ability to fund and offer the clinical trials necessary to conduct research in the medical field. Further, the university asserts disclosure of the submitted information could result in the “loss of financial and marketplace advantage that comes from being an innovator and early adaptor of new services and technology.” 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.³

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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/be

Ref: ID# 855185

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure.