



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2022

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

OR2022-00583

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# 924873 (OGC# 203360).

The University of Texas System (the "system") received a request for three specified lease agreements. The system claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, the system states 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. 2021-35117 (2021). In that ruling, we determined the system may withhold the submitted information 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. Accordingly, the system may rely on Open Records Letter No. 2021-35117 as a previous determination and withhold the information it indicated in accordance with that ruling.¹ *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).

¹ As we are able to make this determination, we need not address the submitted argument against disclosure of this 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 landowners. The system explains University Lands manages the surface and mineral interests of land in Texas for the benefit of the Permanent University Fund. The system explains the information at issue pertains to surface leases for developing, constructing, operating, maintaining, and decommissioning solar resources. 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 landowners. 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 information at issue would give advantage to a competitor or bidder. Accordingly, the system may withhold the remaining information under section 552.104(a) of the Government Code.

In summary, the system may rely on Open Records Letter No. 2021-35117 as a previous determination and withhold the information it indicated in accordance with that ruling. The system 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 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/jm

Ms. Cynthia Tynan - Page 3

Ref: ID# 924873

Enc. Submitted documents

c: Requestor
(w/o enclosures)