



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2022

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701

OR2022-10345

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# 941149 (OGC# 204209).

The University of Texas at San Antonio (the "university") received a request for e-mails sent between the American Athletic Conference (the "AAC") and either of two specified individuals during a specified time period; information pertaining to when the university would begin competing in the AAC; and any agreements between the university and the AAC. You state the university does not have information pertaining to portions of the request.¹ You claim some of 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 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

¹ We note the Act does not require a governmental body to disclose information that did not exist at the time the governmental body received the request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 explain the university's athletics programs, as well as its membership in certain athletic conferences, generates revenue streams for the university "through merchandise and ticket sales, media deals, sponsorship agreements, and alumni giving." Therefore, you assert the university has specific marketplace interests in the information at issue because the university competes with "other college athletics programs, both locally and nationally, for these revenue streams, as well as student athlete and staff recruitment" and conference membership. You argue release of the information at issue would provide a competitive advantage to the university's competitors by allowing "competing entities to undercut or duplicate [the university's athletic program's] strategies and undermine the [u]niversity's position in the marketplace." Based upon your representations and our review, we find you have demonstrated the university has specific marketplace interests in the information at issue and may be considered a "competitor" for purposes of section 552.104. We also find you have demonstrated release of the information you have marked would give advantage to a competitor or bidder. Accordingly, the university may withhold the marked information under section 552.104(a). The university must release the remaining information.

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/jm

Ref: ID# 941149

c: Requestor