



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2022

Ms. Aesil Kim
Assistant General Counsel
University of North Texas
1155 Union Circle, #310907
Denton, Texas 76203-5017

OR2022-11897

Dear Ms. Kim:

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# 942631 (PIR No. 2023).

The University of North Texas (the "university") received a request for four categories of information pertaining to university enrollment and financial aid provided by Ruffalo, Noel, Levitz. 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 information.

Initially, we note you have not submitted information responsive to all categories of information requested pertaining to university enrollment and financial aid provided by Ruffalo, Noel, Levitz. Additionally, you do not inform us the university has released any information to the requestor. Although you state the university has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the university has submitted for our review. This ruling does not authorize the university to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remaining portions of the request existed on the date the university received the request, we assume the university has released such information to the requestor. If the university has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302;

see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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). You explain the university “competes with other universities and colleges in the North Texas region, the State of Texas, the nation and internationally ... for highly qualified students.” You state the information at issue reveals insight into the university’s admissions policy and strategy that would enable competitors to determine the university’s enrollment trends and tactics for student recruitment. You further explain that such information are tailored requests the university submits to the vendor to assess recruitment tactics and “[d]isclosing such information would give competing universities a competitive advantage to use [the] university’s enrollment trends and data to recruit prospective students and would allow other emerging institutions to counter or block the university’s enrollment strategies in this particular ongoing competitive situation.” Therefore, you assert the university has specific marketplace interests in the information at issue. 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 information at issue 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jm

Ref: ID# 942631

Enc. Submitted documents

c: Requestor
(w/o enclosures)