



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 26, 2022

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

OR2022-22021

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# 962324 (OGC# 206163).

The University of Texas Southwestern Medical Center (the "university") received a request for intellectual property agreements between the university and a named third party. You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of DLA Piper LLP ("DLA Piper") and Taysha Gene Therapies ("Taysha"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the 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 received comments from DLA Piper on its behalf and on behalf of Taysha. We have considered the submitted arguments 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). You state the university has specific marketplace interests in the information at issue because the university is competing with other public and private entities in the health care research marketplace, including for research and technology partners. In addition, you state release of the information at issue would cause specific harm to the university’s marketplace interests, providing an advantage to competitors. Further, you assert disclosure of the information you have marked could “undermin[e] the [u]niversity’s ability to form partnerships that may be essential to the [u]niversity’s research efforts.” 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 information you have marked under section 552.104(a) of the Government Code.<sup>1</sup>

DLA Piper raises section 552.110 of the Government Code for some of the remaining information at issue. Section 552.110(b) states, “information is excepted from [required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov’t Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code states:

[C]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from [required disclosure].

*Id.* § 552.110(c). Upon review, we find DLA Piper has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we have marked under section 552.110(c) of the Government Code.<sup>2</sup> However, we find DLA Piper has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue constitutes commercial or financial

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

information, the release of which would result in substantial competitive harm. Further, we find DLA Piper has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the university may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body[.]

*Id.* § 552.1101(a), (b)(1). DLA Piper asserts disclosure of some of the remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing methodology and give advantage to a competitor. However, we find the remaining information at issue is subject to section 552.1101(b) of the Government Code and may not be withheld on the basis of section 552.1101(a) of the Government Code. *See id.* § 552.1101(b) (listing certain types of information not excepted under section 552.1101). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the university: (1) may withhold the information you have marked under section 552.104(a) of the Government Code; (2) must withhold the information we have marked under section 552.110(c) of the Government Code; and (3) 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 962324

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)