



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2022

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

OR2022-24364

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# 966409 [OGC# 206453].

The University of Texas at El Paso (the "university") received a request information pertaining to a specified type of contract. You state you have released some information to the requestor. You claim some of the requested information is subject to previous rulings issued by our office. You also claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2021-26482 (2021) and 2020-14592 (2020). In those rulings, we determined the university may withhold the submitted information under section 552.104(a) of the Government Code. However, we find there has been a change in the law, facts, or circumstances on which Open Records Letter No. 2020-14592 was based. Consequently, we conclude the university may not rely on Open Records Letter No. 2020-14592 as a previous determination. *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). However, we have no indication the law, facts, or circumstances on which the Open Records Letter No.

2021-26482 was based have changed with respect to the information at issue. Thus, the university may continue to rely on Open Records Letter No. 2021-26482 as a previous determination and withhold the information at issue in accordance with that ruling. *See* ORD 673. However, we will consider your argument for the remaining requested 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). After review of the information at issue and consideration of the arguments, we find the university has established release of the information at issue would harm its interest by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the university may withhold the remaining requested information under section 552.104(a) of the Government Code.

In summary, the university may continue to rely on Open Records Letter No. 2021-26482 as a previous determination and withhold the identical information in accordance with those rulings. The university may withhold the remaining requested 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,

Paige Lay
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)