



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2022

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

OR2022-26036

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# 968131 (OGC# 206545).

The University of Texas at El Paso (the "university") received a request for e-mail correspondence involving specified university employees and specified third parties during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

S.W.3d 831, 841 (Tex. 2015). You state the information at issue pertains to licensing and branding opportunities. You explain the university has specific marketplace interests in this information because the university must compete with other sports teams, universities, and producers of unlicensed products to procure licensing arrangements and sell fan apparel and merchandise. Thus, you argue release of the information at issue would harm the university's interests by revealing university strategies to its competitors and compromising the effectiveness of its licensing, marketing, and branding campaigns. 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.²

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/jm

Ref: ID# 968131

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure.