



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2022

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

OR2022-29292

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# 973738 (OGC# 206649).

The University of Texas Southwestern Medical Center (the "university") received a request for a specified agreement between the university and a specified entity. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of Children's Health System of Texas ("Children's Health"). Accordingly, you state the university notified Children's Health of the request for information and of its 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 Children's Health. 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 a healthcare provider that competes with other private and public medical facilities. You explain, in order to remain competitive in the marketplace, the university “must continue to make strategic decisions, such as creating beneficial relationships with other entities and expanding areas of healthcare offerings.” You assert release of the information at issue, which contains the details of an affiliation agreement with Children’s Health, would cause substantial competitive harm to the university in the healthcare marketplace. Further, you assert release of the information at issue “would create a substantial hindrance for the State [of Texas] because the [u]niversity would be at a decided disadvantage in comparison to private entities that are not subject to the Act.” 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.¹

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 973738

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the argument of Children’s Health against disclosure of the submitted information.