



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2011

Mr. R. Brooks Moore
Managing Counsel, Governance
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2011-06601

Dear Mr. Moore:

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# 417256 (TAMU# SO-11-021).

The Texas A&M University System (the "university") received a request for the licensing agreements between the university and four specified licensees. 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.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to

section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, the responsive information consists of executed license agreements related to four wheat varieties previously developed by the university; thus, this information does not pertain to a currently competitive bidding situation. However, you state the university recently issued a request for licensing proposals related to a new wheat variety developed by the university. The requestor indicates he wishes to compete for this new license and seeks the information "for our bid proposal." You inform this office that the executed agreements sought by the requestor relate to wheat varieties that are similar to the newly developed wheat variety. You argue that releasing the executed agreements will give the requestor an advantage in competing for and negotiating a new agreement for the new wheat variety, thereby harming the university's future bargaining position.

Based on your representations and our review of the information, we find the university has demonstrated release of the previously executed license agreements would harm its interest in negotiating a new license agreement for its newly developed wheat variety. Therefore, the university may withhold the submitted information under section 552.104 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 417256

Enc. Submitted documents

c: Requestor
(w/o enclosures)