ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2014

Ms. Ana Vieira
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-06057

Dear Ms. Vieira:

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# 519430 (OGC No. 154115).

The University of Texas Medical Branch at Galveston (the "university") received a request for all technology transfer agreements executed by the university in the 2013 calendar year and documentation regarding the royalties or other payments received pursuant to those agreements. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of BIOLOG Life Science Institute; 60 Pharmaceuticals, LLC; Livwel Therapeutics, Inc.; ConImm Inc.; PhotoKinetix Holdings Inc.; Prospiria, Inc.; TransOcular Inc.; and CBS Therapeutics Inc. Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the interests of a governmental body in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 592 (1991). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You assert that the university has specific marketplace interests in the information at issue because "[t]he [u]niversity is a competitor in the marketplace with regard to research discoveries and subsequent licensing of technologies discovered and patented." You state that in the present situation, the university "is providing a 'service' or 'good' by licensing its inventions" to these third parties. You further state the university is involved in ongoing negotiations regarding pricing and marketing with its licensees as amendments become necessary to protect the interests of the university. You inform this office that the responsive information contains details about the development of certain research technologies, pricing and commercial information, and the terms of the agreements that reflect the approach taken by the university when negotiating its licensing contracts. You explain that if the competitive information regarding these technologies or the terms under which they were developed and licensed were made public, it would undermine the ability of the university to market its research discoveries and to optimize the financial benefit of its investment for the state because the university would no longer be on equal footing with private companies in the research and technology fields. Having carefully considered all of your arguments, we find that you have demonstrated that the university has specific marketplace interests and that the prospective release of the responsive information poses a specific threat of harm to the university's interests in a particular competitive situation. We therefore conclude that the university may withhold the responsive information in its entirety under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 519430

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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