



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2014

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

OR2014-06062

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# 519435 (OGC# 154187).

The University of Texas-Pan American (the "university") received a request for the technology transfer agreements executed by the university during 2013 and documentation pertaining to the royalties or other payments received by the university for those technology transfer agreements. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of FibeRio Technology Corporation, Merit Medical Systems, Inc. ("Merit"), and a named individual. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 Merit. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address Merit's contention some of the submitted information is not subject to the Act. The Act is applicable only to "public information." *See Gov't Code*

§§ 552.002, .021. Section 552.002(a) defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002. Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We find the university wrote, produced, collected, assembled, or maintains the information at issue in connection with the transaction of its official business. Therefore, we conclude this information is subject to the Act and must be released, unless the information falls within an exception to disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

Next, Metric argues some of its information is not responsive to the request for information. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the university has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the university has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the university must release the information at issue to the requestor under the Act.

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 the university has specific marketplace interests in the submitted information 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 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 the submitted 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 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 field. Having carefully considered all of your arguments, we find you have demonstrated the university has legitimate marketplace interests and the prospective release of the submitted information poses a specific threat of harm to the university’s interests in a particular competitive situation. We therefore conclude the university may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup>

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.

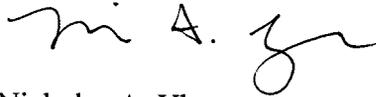
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>As our ruling is dispositive, we need not consider the remaining arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "ni A. ybarra". The signature is written in a cursive style with a large initial "ni" and a stylized "ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bhf

Ref: ID# 519435

Enc. Submitted documents

c: Requestor  
(w/o enclosures)