



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2014

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

OR2014-06064

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# 519439 (OGC# 154191).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to technology transfer agreements that were executed by the university during 2013. 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 several third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining the statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from Glipper, Kaken, Myriad, and Novel. We have considered the submitted arguments and reviewed the submitted information.

¹The third parties notified pursuant to section 552.305 are: AMGEN Inc.; Bayer Pharma AG; Beijing Lab World Bio-medics Technology Corp., Ltd.; BIND Biosciences, Inc.; EMD Millipore Corp.; Glipper Oncology Research, Inc. ("Glipper"); Kaken Pharmaceutical Co., Ltd. ("Kaken"); LAM Therapeutics; The Methodist Hospital; MERCK KGaA; Myriad Genetics, Inc. ("Myriad"); Novel Anti-Infective Technologies, Inc. ("Novel"); PancreatRX, L.L.C.; Precos, Ltd.; US Proton Therapy Holdings, Ltd.; and two named individuals.

Section 552.104 of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). 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 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 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 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 field. Having carefully considered all of your arguments, we find you have demonstrated that the university has specific marketplace interests and that 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 that the university may withhold the submitted information under section 552.104 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.

²As our ruling is dispositive, we need not address any of the remaining arguments against disclosure of this information.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 519439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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