



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2014

Ms. Ana Vieira  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2014-06310

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# 519820 (OGC No. 154167).

The University of Texas at Austin (the "university") received a request for information pertaining to technology transfer agreements executed by the university in the 2013 calendar year, including documentation regarding the royalties or other payments received by the university pursuant to those 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 this information may implicate the proprietary interests of AdBm Technologies, L.L.C.; Chevron Energy Technology Company; Conoco Phillips Company; Coherent Navigation, Inc.; E.I. du Pont de Nemours and Company ("DuPont"); Eastman Chemical Company; Sibex, Inc.; Statoil USA Properties, Inc.; Methanol Holdings (Trinidad) Limited; Shire Human Genetic Therapies, Inc.; Semiconductor Research Corporation; G & W Systems Corporation; SACHEM, Inc.; Neogenis Laboratories, Inc. ("Neogenis"); Hunt Advanced Drilling Technologies, L.L.C.; Toshiba Corporation; VDF FutureCeuticals, Inc.; Pason Systems Corp.; AECASE, Inc.; Babcock & Wilcox Power Generation Group, Inc. ("Babcock"); Bladerunner Farms, Inc.; Case Western University; Steven Conner; Douglass King Seed Company; DSM Bio-Based Products & Services, B.V.; EO Flow Company Limited.; Dabney Gomes; General Graphene Corporation; Horstman, Inc.; Hydro-Quebec; Applied Cardiovascular Solutions, L.L.C. ("ACS"); Intelicess Company; Lamda Guard Technologies, Ltd.; Lynx Laboratories, Inc.; Nanotech Biomachines, Inc.; Ames Research

Center; nCarbon, Inc.; Okeanos Technologies, L.L.C. ("Okeanos"); Pennsylvania State University; Samsung Information Systems America, Inc.; Technische Universitat Dresden; TIBCO Software, Inc.; University of Arizona; Technische Universitat Munchen; and Augustinas Vizbaras. Accordingly, you state 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. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that 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 ACS, Babcock, DuPont, Hydro-Quebec, Neogenis, and Okeanos. We have considered the submitted arguments 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).

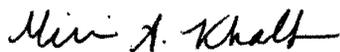
You claim the submitted information is protected in its entirety under section 552.104. You explain a central part of the university's mission includes emerging technology research. You state the university is a competitor in the marketplace with regard to its research discoveries and subsequent licensing of its patented technologies. Further, you state that in the present situation, the university "is providing a 'service' or 'good' by licensing its inventions" to third parties. You inform us the university is involved in ongoing negotiations regarding pricing and marketing with its licensees, as amendments become necessary to protect the university's interests. You state the submitted information contains details about the development of 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 university's ability to market its research discoveries and to optimize the financial benefit of its investment because the university would no longer be on equal footing with private companies in the research field. Having considered your arguments, we find you

have established the university has specific marketplace interests and release of the submitted information poses a specific threat of harm to the university's interests in a particular competitive situation. Therefore, we conclude the university may withhold the submitted information in its entirety 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 519820

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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

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