



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2014

Ms. Audra Gonzalez Welter  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2014-10374

Dear Ms. Welter:

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# 527314 (OGC# 155559).

The University of Texas at Austin (the "university") received a request for all agreements and contracts between the university and Genentech, Inc. ("Genentech") over a specified time period. 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 Genentech. Accordingly, you state you notified Genentech of the request and of its right to submit arguments to this office as to why its 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 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 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 performing research and then licensing its inventions” to third parties. You inform us the university is involved in ongoing negotiations regarding obtaining materials for research and how best to use and market its inventions. You state these types of contracts are often subject to ongoing negotiation and continual amendment throughout the emergence of the intellectual property into a marketable technological discovery. 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 agreements related to its research and obtaining materials for that research. You explain if the commercial information contained in the submitted documents was made public, it would undermine the university’s ability 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.

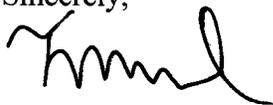
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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

[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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 527314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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