



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2014

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

OR2014-19322

Dear Ms. Tynan:

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# 541675 (UT OGC No. 157543).

The University of Texas at Arlington (the "university") received a request for information related to a specified patent. 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 the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, you notified MK Disposal Technologies, L.L.C. ("MKDT") of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *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 considered the exceptions you claim and reviewed the submitted information.

Section 552.104 excepts from required public 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 connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that 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 that 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).

The university asserts it has specific marketplace interests in the information at issue because it pertains to research technologies developed by the university. You further state the university is providing a service or good by licensing its invention to MKDT, and that the university is involved in ongoing negotiations with regard to pricing and marketing with MKDT. Based on these representations, we find the university has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. *See* ORD 593.

The university contends the release of the submitted information would harm its marketplace interests because the information at issue reveals the scientific and technological details of a university invention currently pending patent approval and licensed to MKDT for development. You state, “[i]f the [information at issue] is released, it would allow competitors to utilize the [u]niversity’s research and development to create competing products, without incurring the time or costs associated with the creation of the [information at issue]” and, thus, “could cause irreparable financial harm to the [u]niversity[,]” and “would negate the intellectual property protection the [u]niversity seeks through the patent process.” Based on your representations and our review, we conclude you have demonstrated that release of the submitted information would cause specific harm to the university’s marketplace interests. *See id.* Therefore, we conclude the university may withhold the submitted information under section 552.104 of the Government Code.¹

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/>

¹As our ruling is dispositive, we do not address the university’s remaining argument against disclosure of the submitted information.

[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,

A handwritten signature in black ink, appearing to read 'J. Behrke', written over a horizontal line.

Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 541675

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael J. Miller
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(w/o enclosures)