



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2015

Mr. R. Brooks Moore
Managing Counsel - Governance
The Texas A&M University System
301 Tarrow Street
College Station, Texas 77840-7896

OR2015-12422

Dear Mr. Moore:

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# 568182 (TAMU 15-251).

The Texas A&M University System (the "system") received a request for three categories of information related to the system's bid to host a 2016 general election Presidential Debate (the "debate"). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample of information.¹

Section 552.104 of the Government Code 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

The system contends it has specific marketplace interests in the submitted information because the system is competing against other institutions of higher education and other entities that operate special use facilities for the right to host the debate. The system states the submitted information consists of the system’s application to the Commission on Presidential Debates (the “commission”). The system explains the commission has not selected a host for the debate, and thus the commission may ask the system for additional information at any time. The system argues release of this information would compromise the system’s competitive advantage in the marketplace by assisting a competing entity during this ongoing application process. Based on these representations and our review, we find the system has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find the system has demonstrated release of the submitted information would cause specific harm to the system’s marketplace interests in a particular competitive situation. Accordingly, the system 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.

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 "Rustam Abedinzadeh". The signature is written in a cursive style with a large initial "R".

Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 568182

Enc. Submitted documents

c: Requestor
(w/o enclosures)