



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2015

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

OR2015-20654A

Dear Ms. Tynan:

This office issued Open Records Letter No. 2015-20654 (2015) on October 2, 2015. We have examined this ruling and determined that we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on October 2, 2015. Your request was assigned ID# 591315 (OGC# 163217).

The University of Texas M. D. Anderson Cancer Center (the "university") received a request for (1) vendor demonstration scripts and agendas pertaining to thirty-one different areas and (2) scoring sheets related to a specified demonstration. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of EPIC Systems Corporation ("EPIC").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified EPIC of the request for

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<sup>1</sup>You inform us the university has determined information pertaining to Computer Financial Consultants, Inc. ("CFC"), is not at issue in this request. Accordingly, we do not address the public availability of any such information, and the university is not required to release such information in response to this request.

information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 received comments from EPIC. We have reviewed the submitted information and the submitted arguments.

Initially, we must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The university received the request for information on July 15, 2015. Accordingly, the university was required to provide the information required by section 552.301(e) by August 5, 2015. While the university submitted some of the requested information within the fifteen-business-day time period as required by section 552.301(e), the university did not submit the remaining requested information until October 12, 2015, after the fifteen-business-day deadline had passed. *See id.* § 552.308(b) (describing rules for calculating submission dates of writings sent via interagency mail). Accordingly, we conclude the university failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to the requested information that was not timely submitted.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Because EPIC objects to the release of the information at issue, we will consider whether the university may withhold the information at issue based on EPIC's interest.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university states it has specific marketplace interests in the information at issue. The university explains it is a health institution that provides patient care through hospitals and clinics. The university informs us it has numerous local, national, and international locations that are funded through private grants and contracts, philanthropy and foundation support, state funding, federal grants and contracts, and internal funding. The university explains it “must continually expand and adapt the offering of clinical services and products to meet the rapidly changing healthcare market and compete with other entities offering the same or similar services and products” in order to meet its mission. Based on these representations, we find the university has demonstrated it has specific marketplace interests with respect to the information at issue. In addition, the university states the information responsive to Item 1 of the request includes specific detailed methods and strategies, which the university will use to implement its electronic health records system. The university argues release of the information will compromise its competitive advantage in the marketplace by allowing competing entities to use the same ideas and steps without the cost and time the university invested to develop the programs. Thus, the university argues release of the information will negatively impact its position as a market leader. After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the information responsive to Item 1 of the request under section 552.104(a) of the Government Code.<sup>2</sup>

We now turn to EPIC’s interest in withholding the requested information responsive to Item 2 of the request. As noted above, section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may also invoke this exception, which is subject to the test discussed above. *Boeing*, 466 S.W.3d at 833. EPIC states it has competitors. In addition, EPIC states portions of the information responsive to Item 2, which EPIC has indicated, relate to its business and contracting practices and methods, its pricing structures and methods, its implementation processes and methods, its capabilities, features of its software, and plans for its future development. EPIC argues release of the information at issue would cause harm to EPIC because such release would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find EPIC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the portions of the information responsive to Item 2 EPIC has indicated under section 552.104(a) of the Government Code.

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, the university may withhold the information responsive to Item 1 of the request and the portions of the information responsive to Item 2 EPIC has indicated under section 552.104(a) of the Government Code. The university must release the remaining information responsive to Item 2 of the request.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

Ref: ID# 581819

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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