



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2015

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

OR2015-20835

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# 581813 (OGC# 163220).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to the implementation of software associated with a specified contract. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of EPIC Systems Corporation, ("EPIC"). Accordingly, you state, and provide documentation showing, you notified EPIC of the request for 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 considered the submitted arguments and reviewed the submitted information.

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*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). The university states it has specific marketplace interests in the information at issue because the university

competes “within the healthcare marketplace for patients, and also with other educational, health, and charitable organizations for donations and endowments to fund general operations, education, and research.” In addition, the university states release of the information at issue would affect its ability to fund and offer clinical services and products necessary for expanding medical and academic care as well as result in the loss of revenue through patient care. The university contends release of the information at issue would reveal details of its strategic plans to the detriment of its operational abilities, and harm its ability to compete in the marketplace with entities seeking to provide the same type of healthcare services. 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 submitted information under section 552.104(a) 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/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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/akg

Ref: ID# 581813

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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

Mr. Michael B. Gerdes
Epic Systems Corporation
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Verona, Wisconsin 53593
(w/o enclosures)