



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2016

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

OR2016-07348

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# 603916 (OGC# 167041).

The University of Texas Medical Branch at Galveston (the "university") received a request for the proposals and scoring information pertaining to a specified request for proposals. The university claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the university states release of this information may implicate the proprietary interests of MedTox Laboratories, Inc.; Aegis Sciences Corporation ("Aegis"); and AIT Laboratories ("AIT"). Accordingly, the university states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Aegis and AIT. 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*, 466 S.W.3d 831 (Tex. 2015). The university represents the information pertains to a competitive bidding situation. In addition, the university states release of the requested information prior to execution of a final contract would disadvantage the university in obtaining a fair contract. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 603916

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Guna Rogers
Corporate Counsel
& Executive Director
AIT Laboratories
2265 Executive Drive
Indianapolis, Indiana 46241
(w/o enclosures)

Mr. Joel T. Galanter
Chief Legal Officer & General Counsel
Aegis Sciences Corporation
515 Great Circle Road
Nashville, Tennessee 37228
(w/o enclosures)

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

Ms. Pamela S. Edwards
Vice President
MedTox Laboratories, Inc.
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St. Paul, Minnesota 55112
(w/o enclosures)