



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2016

Ms. Cynthia Tynan  
Attorney & Public Information Coordinator  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2016-10897

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# 609728 (OGC# 168129).

The University of Texas M. D. Anderson Cancer Center (the "university") received a request for seven categories of information pertaining to the university's Institute for Applied Cancer Science. You state the university will release information responsive to categories one through six of the request. 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 representative sample of information.<sup>1</sup>

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 submitted information. 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

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<sup>1</sup>We 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.

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 at issue includes the names of target proteins under study. 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 submitted information under section 552.104(a) of the Government Code. As our ruling is dispositive, we need not consider the university’s remaining argument against disclosure.

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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

Ref: ID# 609728

Enc. Submitted documents

c: Requestor  
(w/o enclosures)