



April 1, 2002

Ms. Linda Tamez  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2002-1566

Dear Ms. Tamez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160609.

The University of Texas (the “university”) received a request for information related to the licensing and funding for the nanocrystal technology developed by a named university professor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, the university notified third parties of the request because their proprietary interests are implicated.<sup>1</sup> As of the date of this ruling, this office has received a response from ARCH Venture Partners objecting to the release of its information. We have considered the exceptions you claim and the arguments of the third party, and have reviewed the submitted sample information.<sup>2</sup>

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<sup>1</sup>See Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

<sup>2</sup>We assume that the “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 that those records contain substantially different types of information than that submitted to this office.

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990).

In this case, you inform us that the university is currently negotiating with ARCH Venture Partners to license the nanocrystal technology that is the subject of the request for information, that a final licensing agreement has not been reached, and that premature release of the requested information would hinder the ability of the university to obtain the most favorable licensing agreement for the technology. We therefore conclude that the information is excepted from disclosure based on section 552.104 until such time as the licensing contract is awarded. Because section 552.104 is dispositive, we do not address your claims under section 552.101 or 552.110, or the arguments of ARCH Venture Partners.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 160609

Enc. Submitted documents

c: Ms. Michelle Simpkins  
Winstead, Sechrest & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
(w/o enclosures)

Mr. Clinton W. Bybee  
Managing Director  
ARCH Venture Corporation  
6801 North Capital of Texas Highway, Building 2, Suite 225  
Austin, Texas 78731  
(w/o enclosures)