



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2006

Ms. Carol Longoria  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2006-06330

Dear Ms. Longoria:

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# 251693.

The University of Texas at Austin (the "university") received a request for the signed option agreement regarding specific intellectual property. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state that the submitted information may contain proprietary information, and thus, pursuant to section 552.305 of the Government Code, you have notified Remicalm, L.L.C. ("Remicalm"), BC Cancer Agency ("BC"), and The University of Texas M.D. Anderson Cancer Center ("M.D. Anderson") of the request and of each company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have received correspondence from Remicalm. We have considered all of the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that any person may submit comments stating why information should or should not be released).

The university claims that the submitted information may be withheld under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would

give advantage to a competitor or bidder.” The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978). Section 552.104 does not apply when there is only a single individual or entity seeking a contract, since there are no “competitors” for that contract. *See* Open Records Decision No. 331 (1982).

You inform us that the information at issue consists of a Patent Maintenance and Exclusive Option License Agreement which includes certain patents and patent applications information as well as lists of potential products, devices, and processes. You state that this agreement was granted to Remicalm to review the technologies and obtain an exclusive license to use, develop, manufacture, market and commercialize these technologies. You explain, however, that this agreement ends on June 15, 2006 and is only a precursor to a final Patent License Agreement. You also explain that if the university and Remicalm do not come to an agreement through negotiations, it would become necessary to seek another option partner. Thus, you state that release of this information would harm any such negotiations. Upon review of your arguments and the submitted information, we find that you have demonstrated that public release of the information at issue would cause specific harm to the university’s interests in a particular competitive bidding situation. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code. As our ruling on this issue is dispositive, we need not address the remaining submitted arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 251693

Enc. Submitted documents

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