



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 17, 2006

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

OR2006-07627

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# 247134.

This office issued a letter to the University of Texas of the Permian Basin (the "university") on April 25, 2006. We have examined this letter and determined that we made an error in closing ID# 247134 without issuing a ruling. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct our previous error. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on April 25, 2006. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

The university received a request for any information produced or disseminated during a specified time period relating to a specified test reactor project. You state that some of the responsive information will be released to the requestor. You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.104, 552.107, 552.111, 552.137, and 552.1235 of the Government Code. In addition, you state that the university notified those entities whose proprietary interests might be implicated by the request of their right to submit comments to this office pursuant to section 552.305 of the

Government Code.<sup>1</sup> We have considered all of the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

The university claims that the information submitted at Tabs 6-9 is excepted in its entirety under section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You assert that the university has specific marketplace interests in the information at issue because "the [university] and its partners are competitors in the marketplace with regard to any research discoveries and any subsequent licensing of technological discoveries stemming from this collaborative process." You inform us that, with regard to the information at issue, the university, together with partner researchers, "provide a 'service' or 'good' by utilizing, and potentially licensing, the technology offered by the [project] to fulfill research needs sought by the federal government." You indicate that the university competes with private companies and other research facilities in this arena. You also claim that "[r]elease of the information requested would give an advantage to other research facilities" with whom the university competes for federal grants. Based on these representations, we conclude that the university has demonstrated that it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* ORD 593.

You also assert that release of the submitted information would harm the university's marketplace interests. You inform us that the submitted information contains details about the types of technologies currently under research or licensed, internal agreements, and

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<sup>1</sup>The third parties that were sent notice pursuant to section 552.305 are the City of Midland, City of Andrews, City of Odessa, Thorium Power, Inc., and General Atomics.

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

strategic partnership discussions, the release of which “would facilitate the misappropriation of these discoveries by outside parties[.]” You assert that, if the university’s competitors had access to this information, they would gain an advantage in the marketplace and compromise the university’s position in a competitive market. Based on your representations and our review of the submitted information, we conclude that the university has shown that release of the submitted information will bring about specific harm to the university’s marketplace interests. *See* ORD 593. Accordingly, under section 552.104 of the Government Code, the university may withhold the submitted information in Tabs 6-9. As our ruling on this issue is dispositive, we need not address your other arguments or the claims made by General Atomic.

Section 552.1235(a) of the Government Code excepts “the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” However, this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See* Gov’t Code § 552.1235(b). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 of the Education Code defines an “institution of higher education” as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section. The university states it is a component of the University of Texas System. Thus, we agree that the university qualifies as an “institution of higher education” under section 61.003 of the Education Code. Further, because section 552.1235 of the Government Code does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. Gov’t Code § 311.005(2). Therefore, the names of the third parties who made a gift, grant or donation of money or property to the center are excepted from disclosure. Upon review of the submitted information at Tab 10, we note that several of the listed donors affirmatively state that they agree to the release of their names. Therefore, we find that the university may not withhold the names of these donors under section 552.1235. The university must withhold the names of the remaining donors, which we have marked, pursuant to section 552.1235.

In summary, the university may withhold the submitted information in Tabs 6-9 pursuant to section 552.104 of the Government Code. The information we have marked in Tab 10 must be withheld under section 552.1235 of the Government Code. The remaining information in Tab 10 must be released to the requestor.

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/eb

Ref: ID# 247134

Enc. Submitted documents

c: Mr. Forrest Wilder  
The Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)

City of Andrews  
Attn: Mr. Glen E. Hackler, City Manager  
111 Logsdon  
Andrews, Texas 79714  
(w/o enclosures)

City of Midland  
Attn: Mr. Rick Menchaca, City Manager  
P.O. Box 1152  
Midland, Texas 79702  
(w/o enclosures)

City of Odessa  
Attn: Mr. Richard Morton, City Manager  
411 West 8<sup>th</sup> Street  
Odessa, Texas 79761  
(w/o enclosures)

Thorium Power, Inc.  
Attn: Mr. Seth Grae  
8300 Greensboro Drive, Suite 800  
McLean, VA 22102  
(w/o enclosures)

General Atomics  
Attn: Mr. Malcolm Labar  
3550 General Atomics Court, MS 13/269  
San Diego, CA 92186-9784  
(w/o enclosures)

Ms. Heidi Frahm  
Quinn Emanuel  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
(w/enclosures)