



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2010

Ms. Neera Chatterjee  
Office of General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2010-05029

Dear Ms. Chatterjee:

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# 373853.

The University of Texas at San Antonio (the "university") received a request for any written or other records since January 1, 2000 concerning: any employment/research contract, agreement, memorandum/agreement, consultant contract, correspondence, e-mails, directives, guidance, reviews, office and/or computer equipment or secretarial and other assistance granted or provided to a named individual in any federal intelligence or military agency employment capacity; and employment/research/consulting daily assignments/schedules, briefings, notifications, subcontracting agreements/contracts/assignments, meetings/teleconference dates, employment offer/letter of intent, guidance, information assistance, or any legal, advisory or consulting agreement/funding/contracts/memorandum exchanged between the named individual and other specified individuals, in the named individual's alleged federal military and intelligence employment capacities. You state the university is releasing some of the responsive information. You claim the submitted e-mails and proposal drafts are 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 information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in competitive bidding and 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 the university is a competitor in the marketplace for federal grant funding. You state the submitted e-mails and proposal drafts concern a proposal which was submitted for federal grant funding in 2005 and will again be submitted for grant funding in 2010. You assert the release of the e-mails and proposal drafts would compromise the university's competitive advantage in the marketplace for federal grant funding by placing research and business plan information in a public forum, thus facilitating misappropriation by outside parties. You also assert the marketplace for federal grants is highly competitive and that release of the information at issue would allow the competing parties an unfair advantage over the university. Based on these representations and our review, we find the university has demonstrated that it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find you have demonstrated that release of the proposal drafts and an e-mail which contains details about the proposal would cause specific harm to the university's marketplace interests. We therefore conclude the university may withhold the proposal drafts and the marked e-mail under section 552.104. The remaining e-mails contain non-substantive comments regarding the proposal. You do not explain, nor can we discern, how release of the remaining e-mails will harm the university's marketplace interests. Therefore the remaining e-mails may not be withheld under section 552.104. We will, however, consider your argument under section 552.101 for the remaining e-mails.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 51.914 of the Education Code, which provides in pertinent part as follows:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, or otherwise:

- (1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being

registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee[.]

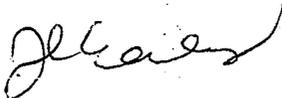
Educ. Code § 51.914(1). The purpose of section 51.914(1) is to protect the “actual or potential value” of products, devices, or processes developed in whole or in part at a state institution of higher education. *See* Open Records Decision No. 497 at 6 (1988) (interpreting statutory predecessor to section 51.914). Information that does not reveal the details of the research or allow a person to appropriate the research efforts of the state institution of higher education is not protected under section 51.914. *See* Open Records Decision Nos. 557 at 3 (1990), 497 at 6-7. You have not explained, nor can we discern, how the remaining e-mails, which consists solely of non-substantive comments about the proposal, reveal details about the processes and plans described in the proposal. *See id.* Accordingly, the university may not withhold the remaining e-mails under section 552.101 in conjunction with section 51.914.

In summary, the university may withhold the proposal drafts and the marked e-mail under section 552.104 of the Government Code. The remaining e-mails must be released.<sup>1</sup>

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

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<sup>1</sup>We note one of the remaining e-mails contains an e-mail address of a member of the public, which you state the university will redact pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies which authorizes withholding of ten categories of information, including an e-mail address of a member of the public under section 552.137 without the necessity of requesting an attorney general decision.

Ref: ID# 373853

Enc. Submitted documents

c: Requestor  
(w/o enclosures)