



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2010

Ms. Zeena Angadicheril  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2010-17678

Dear Ms. Angadicheril:

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# 401084 (OGC# 133123).

The University of Texas at San Antonio (the "university") received a request for all university approved research protocol (complete application) for a proposal submitted by a named individual to evaluate the Texas Department of Criminal Justice In-Prison Driving While Intoxicated Recovery Program, including the original application form and letter of approval in principle with stipulations. You claim that 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 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 research protocol and application concern research for which the university is currently applying for federal government grant funding. You assert the release of the submitted information would compromise the university's competitive advantage in the marketplace for federal grant funding by placing research and details about the specifics of the types of technologies and processes under research 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 submitted information would cause specific harm to the university's marketplace interests. We therefore conclude the university may withhold the submitted information under section 552.104 of the Government Code.<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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 401084

Enc. Submitted documents

c: Requestor  
(w/o enclosures)