



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2010

Mr. R. Brooks Moore  
Assistant General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845

OR2010-19280

Dear Mr. Moore:

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# 403578 (SO-10-100).

The Texas A&M University System (the "system") received a request for specified license agreements. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 protects from required public 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 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). Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You seek to withhold portions of the submitted license agreements between the system and private entities. You contend that the system has "specific marketplace interests in the information at issue because the [system] is a competitor in the marketplace with regard to the commercialization of products resulting from research conducted by institutions within the [system]." You argue that release of the information at issue could "provide a competitive advantage to other institutions and entities attempting to commercialize similar products or seeking to form relationships with the system's licensees or potential licensees." However, we find you have not explained how the system was engaged in a particular competitive bidding situation at the time the system received the present request for information, nor have you demonstrated that public release of the information at issue would cause specific harm to the system's interests in a competitive bidding situation. Accordingly, the system may not withhold any of the information you have marked under section 552.104 of the Government Code. As you raise no further arguments against disclosure, the submitted information must be released.

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 403578

Enc. Submitted documents

c: Requestor  
(w/o enclosures)