



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2011

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

OR2011-05101

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# 414362 (OGC Nos. 135032 and 135033).

The University of Texas at Austin (the "university") received two requests for information pertaining to the university's contract with ESPN, Inc. ("ESPN") and the university's dealings with IMG College in creation of a television network. You state most of the requested information has been released to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of ESPN. Accordingly, you notified ESPN of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from an attorney for ESPN. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from an attorney for one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 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 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 new sources of revenue and particularly with respect to its athletics department, the university must compete with other prominent universities across the nation. You state release of paragraphs 14(B) and 14(G) of the agreement would give an unfair leverage third parties, jeopardizing the university's and ESPN's ability to fulfill contract obligations which could result in termination of the agreement. You state termination of the agreement would pose a significant setback to the university as the agreement is expected to generate substantial revenue and positive publicity to the university. The requestor states the university cannot be a "competitor in the marketplace" because the university's mission is purely educational. However, the university asserts it must generate revenue in order to support its mission. Thus, based on your representations and our review, we find, in this instance, the university has demonstrated 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 information you marked, consisting of paragraphs 14(b) and 14(G) of the agreement would cause specific harm to the university's marketplace interests. We therefore conclude the university may withhold the information you marked under section 552.104.<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.

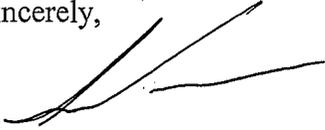
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>As our ruling is dispositive for this information, we need not address ESPN's arguments against its release.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 414362

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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(w/o enclosures)