



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 3, 2011

Mr. R. Brooks Moore
Managing Counsel, Governance
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2011-06003

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# 416088 (SO-11-016).

The Texas A&M University System (the "system") received a request for all records of the National Biosecurity Foundation (the "NBF") not previously provided in response to previous requests for information by the requestor, including e-mails sent or received by system personnel in relation to the NBF. You state you are releasing some of the requested information. You claim the remaining information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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(a). 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 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

¹We 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.

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 explain the system is a competitor in the marketplace for federal research funding and technology commercialization through its affiliation with the NBF, a system nonprofit organization developed for discovering and implementing capabilities to enhance the nation's biosecurity. You state the information submitted as Exhibit B-1 relates to the NBF's collaboration with another entity to jointly compete for a federal contract and Exhibit B-2 concerns information pertaining to the specific strategy for securing the federal contracts, which are still pending. You also assert the marketplace for federal funding of these projects is highly competitive and indicate that release of the information at issue would allow the competing parties an unfair advantage over the system. Based on these representations and our review, we find that you have demonstrated that the system has specific marketplace interests. We also find that you have demonstrated the existence of a specific threat of actual or potential harm to the system's interests in a particular competitive situation. We therefore conclude that the system may withhold the submitted information under section 552.104 of the Government Code.²

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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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Ref: ID# 416088

Enc. Submitted documents

cc: Requestor
(w/o enclosures)