



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2011.

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

OR2011-10656

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# 424838 (OGC# 137364).

The University of Texas at Austin (the "university") received a request for all correspondence during a specified time period between the university and ESPN regarding licensing agreements and contracts establishing a television network. You state you are releasing some information to the requestor. You claim that the submitted information is 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 representative sample of information.¹

Initially, you state some of the responsive information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-05101

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(2011). In that decision, we ruled the university may withhold paragraphs 14(B) and 14(G) of the agreement at issue under section 552.104 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university may continue to rely on that ruling as a previous determination and continue to withhold the information you have marked in accordance with that prior ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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 the remaining information you have marked would give an unfair leverage to 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. Thus, based on your representations and our review, we find, in this instance, you have demonstrated the university 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 remaining information you have marked would cause specific harm to the university’s marketplace interests. We therefore conclude the university may withhold the remaining information you have marked under section 552.104 of the Government Code.

²As our ruling is dispositive for this information, we need not address ESPN’s arguments against its release.

In summary, the university may continue to rely on Open Records Letter No. 2011-05101 as a previous determination and withhold the information you have marked in accordance with that prior ruling. The university may withhold the remaining information you have marked under section 552.104 of the Government Code. The remaining 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 424838

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Susan Hendricks
Hull Hendricks, LLP
Chase Tower
221 West 6th Street, Suite 960
Austin, Texas 78701-3407
(w/o enclosures)