



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

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

OR2011-12180

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# 428562 (OGC# 138105).

The University of Texas at Arlington (the "university") received a request for information pertaining to the university's sponsor research agreement with 1st Resource Group, Inc. ("1st Resource") for a new natural gas-to-liquid conversion process and the licensing agreement based on that sponsor research agreement. You state most of the requested information will be released. 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 1st Resource. Accordingly, you notified 1st Resource 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 considered the exception you raise and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from 1st Resource explaining why its information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes

proprietary information of 1st Resource, and the university may not withhold any portion of the information pertaining to 1st Resource on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

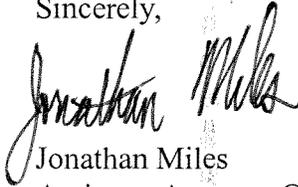
Section 552.104 of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records 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 explain the university is a competitor in the marketplace with regards to its research discoveries related to natural gas-liquid conversion and state such technologies are patented and licensed to 1st Resource. You state release of information you have marked in the agreement would “have a negative impact on future contract negotiations, thus decreasing the university’s competitiveness when marketing the technologies it develops.” You additionally state release of information at issue would undermine the university’s ability to “optimize the financial benefit of its investment for the state because it would be at a decided disadvantage with comparison to private entities.” We find, in this instance, the university has demonstrated that it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. You have not, however, explained or otherwise demonstrated how release of the information you seek to withhold would harm the university’s interests in a particular competitive situation. Therefore, we find you have failed to demonstrate release of the information at issue would cause specific harm to the university’s marketplace interests. Consequently, the university may not withhold the information you have marked under section 552.104 of the Government Code. As you have not claimed any other exceptions to 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 428562

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Fort Worth, Texas 76109
(w/o enclosures)