



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

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

OR2012-13426

Dear Ms. Chatterjee:

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# 461848 (OGC# 143848).

The University of Texas at Austin (the "university") received a request for: (1) any documents concerning university communications with Border Media Partners, BMP, or its affiliates; (2) any documents concerning any inquiries made by the university related to Austin radio station 98.9 FM; and (3) any documents related to discussions concerning the university's acquisition or possible acquisition of any radio station, including any agenda items related to this issue. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.107, and 552.111 of the Government Code. You also inform us that the release of some of this information may implicate the proprietary interests of a third party. Accordingly, you notified the third party 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 Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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.

Initially, you have marked a portion of the submitted information as not responsive to the request for information. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

Section 552.104 of the Government Code excepts 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 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 KUT, a public radio station operated by the university, is a competitor in the marketplace in terms of content provided by public and commercial radio stations and online providers. You inform us that KUT’s efforts to remain innovative in this marketplace have led KUT and the university to seek new ways to provide the best possible content for KUT’s audience. You state the responsive information discusses ideas and potential agreements that are in their initial, due diligence stages, including initiatives that could bring new revenue to the university. You explain that releasing this information would make it more difficult for the university to seize upon opportunities to expand its potential revenue base and find new platforms to provide content and, thus, would give competitors an advantage in pursuing these opportunities. You state release of the responsive information would place the university at a disadvantage in the pursuit of the potential agreements at issue. Based on your representations and our review, we find you have demonstrated the university has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Furthermore, we find you have demonstrated that release of the responsive information would harm the university’s interests in a particular ongoing competitive situation. We therefore conclude the university may withhold this 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.

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

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 461848

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)