



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2012-16965

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# 469053.

The Texas A&M University System (the "university") received a request for information submitted by the university in response to a specified solicitation and any resulting contracts. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the claimed exceptions 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 certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded 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 the governmental body 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

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.

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 has been awarded a base award from the U.S. Department of Health and Human Services ("HHS") in connection with the solicitation at issue. However, you explain the university will remain in competition with other award winners for additional funds from HHS during the next twenty-five years. You also explain the project at issue requires the university to enter into contracts with multiple subcontractors, which the university is in the process of negotiating. You state the information at issue contains specific budget and cost information, along with detailed plans for implementing the project. You assert that release of this information would put the university at a competitive disadvantage both in competing for future funds and negotiating with subcontractors. Based on your representations, we find you have demonstrated the university has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104(a). *See* ORD 593 at 3. We also find you have demonstrated a specific threat of actual or potential harm to the university's interests in a particular competitive situation. We therefore conclude the university 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

²Because our ruling is dispositive, we do not address your remaining argument against disclosure.

Ref: ID# 469053

Enc. Submitted documents

c: Requestor
(w/o enclosures)