



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2013

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

OR2013-15496

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# 498564 (SO-13-049).

The Texas A&M University System (the "system") received a request for a specified agreement between Motorola Mobility, L.L.C. ("Motorola"), and Texas A&M University or the system. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also inform us the release of this information may implicate the proprietary interests of the California Institute of Technology ("CIT"), Carnegie Mellon University, Harvard University, Leland Stanford Junior University, the Massachusetts Institute of Technology, Motorola, the University of Illinois, and the Virginia Polytechnic Institute. Accordingly, you notified these third parties of the request for information and of their 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 received comments from CIT. We have considered the submitted arguments and reviewed the submitted information.

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 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 state the system is a competitor in the marketplace for scientific research sponsored by private companies, the state or federal government, or other institutions of higher education. You explain the system’s efforts often result in entering sponsored research agreements like the requested agreement. You assert the release of this information poses a specific threat of actual or potential harm to the system’s interests in a particular competitive situation because the system is currently negotiating a major sponsored research agreement with a private company. You also state the requested agreement’s terms differ from many of the system’s other sponsored research agreements and the disclosure of this information would negatively impact the system’s ability to negotiate the most favorable terms for the agreement the system is currently negotiating. Based on your representations and our review, we find that you have demonstrated 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 the system may withhold the submitted information under section 552.104 of the Government Code.¹

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.texasattorneygeneral.gov/open/>

¹As our ruling is dispositive, we need not address CIT’s arguments against disclosure.

[orl_ruling_info.shtml](#), 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 may be directed to 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# 498564

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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