



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2014

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

OR2014-06053

Dear Ms. Vieira:

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# 519434 (OGC# 154132).

The University of Texas Southwestern Medical Center (the "university") received a request for the technology transfer agreements executed during a specified time period and documentation regarding the royalties or other payments received by the university for those agreements. You claim the submitted information is excepted from disclosure under section 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Amgen Inc. ("Amgen"); Amplimmune, Inc. ("Amplimmune"); Baylor College of Medicine; Becton, Dickinson and Company; Boehringer Ingelheim RCV GmbH & Co KG; Daiichi Sankyo Co., Ltd.; Dana-Farber Cancer Institute ("DFCI"); DioGenix; Eli Lilly and Company; EMD Millipore Corporation; Enterprise Mimetics, Inc.; Eriem Surgical, Inc.; GVK Biosciences Private Limited; Immtox, L.L.C.; Institute de Recherches Servier; Jackson Walker L.L.P.; Les Laboratoires Servier; Medical College of Wisconsin ("MCW"); Merck Sharp & Dohme Corp.; MiNA Therapeutics Limited ("MiNA"); MolecularMD; Novartis Phanna AG ("Novartis"); Novus Biologicals L.L.C.; Panamab, Inc.; Pfizer Inc.; Phillip D. Purdy, M.D.; Regeneron Pharmaceuticals Inc.; Sowell & Co.; SynAlpha; University of Texas Health Science Center at Houston; and Tonbo Biosciences. Accordingly, you state, and provide documentation showing, you notified the 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 the Act in certain circumstances). We have received comments from Amgen, Amplimmune, DFCI, MCW, MiNA, and Novartis. We have considered the submitted arguments and reviewed the submitted information.

Initially, Amplimmune argues its license agreement is not responsive to the request for information. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the university has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the university has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the university must release the information at issue to the requestors under the Act.

Section 552.104 of the Government Code exempts 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 the university has a specific marketplace interest in the submitted information because the university "is a competitor in the marketplace with regard to research discoveries and subsequent licensing of technologies discovered and patented." You state the university "is providing a 'service' or 'good' by licensing its inventions to these third parties." You further state the university "is involved in ongoing negotiations regarding pricing and marketing with its licensee(s) as amendments become necessary to protect the interests" of the university. You explain release of this information would compromise the university's position in a competitive market and cause irreparable financial harm to the university because these agreements reflect the approach taken by the university when negotiating how to license its intellectual property and other research facilities would know the specific terms the university is willing to accept. Based on these representations and our review, we find

the university has demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find the university has demonstrated release of the submitted information would cause specific harm to the university's marketplace interests. Therefore, we conclude the university may withhold the submitted information under section 552.104.¹

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/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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 519434

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Patrick Turley
Baylor College of Medicine
One Baylor Plaza, BCM201-600D
Houston, Texas 77030
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Larry Tiffany
DioGenix
402 King Farm Blvd., Ste 125-223
Rockville, Maryland 20850
(w/o enclosures)

Aylett Hughes
Enterprise Mimetics, Inc.
2308 Rio Grande, #204
Austin, Texas 78705
(w/o enclosures)

Carol A. Teitz
Eriem Surgical, Inc.
28438 Ballard Dr.
Lake Forest, Illinois 60045
(w/o enclosures)

Mani Mohindru
Immtox, LLC
27 Studio Lane
Bronxville, New York 10708
(w/o enclosures)

AVP, External Scientific Affairs
Merck Sharp & Dohme Corp.
Mail Code: RY70-200
126 East Lincoln Ave.
Rahway, New Jersey 07065
(w/o enclosures)

Merck Sharp & Dohme Corp.
Office of the Secretary
P.O. Box 100
Whitehouse Station, New Jersey
08889
(w/o enclosures)

Intellectual Property Development
EMD Millipore Corporation
28820 Single Oak Drive
Temecula, California 92590
(w/o enclosures)

Robert Habib
MiNA Therapeutics Limited
1 Vincent Square
London, SWIP 2PN
United Kingdom
(w/o enclosures)

Erica LoRe
Dana-Farber Cancer Institute
450 Brookline Avenue, BP372
Boston, Massachusetts 02215
(w/o enclosures)

W. Gregory Cox, Ph.D.
MolecularMD
1341 SW Custer Drive
Portland, Oregon 97219
(w/o enclosures)

Jeffrey R. Harder
Jackson Walker LLP
140 I McKinney Street, Suite 1900
Houston, Texas 77010
(w/o enclosures)

Dr. Adan Rios
Panamab, Inc.
6310 Mystic Bridge
Houston, Texas 77030
(w/o enclosures)

Beth Levine
Regeneron Pharmaceuticals Inc.
777 Old Saw Mill River Road
Tarrytown, New York 10591
(w/o enclosures)

Thomas L. Harrison
Sowell & Co.
1601 Elm St., Suite 300
Dallas, Texas 75201
(w/o enclosures)

Cynthia Lander
SynAlpha
30 Hilltop Rd.
Mendham, New Jersey 07945
(w/o enclosures)

Office of Technology Management
UT Health Science Center at Houston
7000 Fannin St., Suite 720
Houston, Texas 77030
(w/o enclosures)

Joseph Bulock
Amgen Inc.
One Amgen Center Drive, MS 28-2-C
Thousand Oaks, California 91320
(w/o enclosures)

Andrew W. Shyjan
MedImmune
One Medimmune Way
Gaithersburg, Maryland 20878
(w/o enclosures)

Becton, Dickinson and Company
10975 Torreyana Road
San Diego, California 92121
(w/o enclosures)

Legal Department
Boehringer Ingelheim RCV GmbH & Co
KG
Dr. Boehringer-Gasse 5-11
A-1121 Vienna
Austria
(w/o enclosures)

Pascal Touchon
Les Laboratoires Servier
50 rue Carnot
92150 Suresnes
France
(w/o enclosures)

Yosuke Uchiyama
Oncology Research Laboratories
Daiichi Sankyo Co., Ltd.
1-2-58 Hiromachi, Shinagawa-ku
Tokyo 140-8710
Japan
(w/o enclosures)

GVK Biosciences Private Limited
#Plot 28A, IDA, Nacharam
Hyderabad 500 076
India
(w/o enclosures)

General Counsel
Eli Lilly and Company
Lilly Corporate Center, D.C. 1117
Indianapolis, Indiana 46285
(w/o enclosures)

NIBR Legal Office
Novartis Phana AG
Lichtstrasse 35
4056 Basel
Switzerland
(w/o enclosures)

General Counsel
Novus Biologicals LLC
P.O. Box 802
Littleton, Colorado 80160
(w/o enclosures)

Chief Counsel, R&D
Pfizer Inc.
235 East 42nd Street
New York, New York 10017
(w/o enclosures)

Phillip D. Purdy, M.D.
UT at Southwestern Medical Center
5303 Harry Hines Boulevard
Dallas, Texas 75390-8869
(w/o enclosures)

Jean Paul Vilaine
Institut de Recherches Servier
Cardiovascular Discovery Research
Department
3, Rue de la Republique
92150 Suresnes
France
(w/o enclosures)

Joseph O. Hill, Kalpa Vithalani
Office of Technology Development
8701 Watertown Plank Road
Milwaukee, Wisconsin 53226
(w/o enclosures)

Christie Ruiz and General Counsel
Tonbo Biosciences
4940 Carroll Canyon Road
San Diego, California 92121-1735
(w/o enclosures)

Sarah D. Cohn
Medical College of Wisconsin
P.O. Box 26509
Milwaukee, Wisconsin 53226
(w/o enclosures)