



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2014

Ms. Cynthia Tynan  
Attorney and Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2014-09570

Dear Ms. Tynan:

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# 524874 (OGC #154939).

The University of Texas System (the "system") received a request for the University of Texas at Austin's (the "university") application to the system for funds for the Giant Magellan Telescope (the "telescope"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state you notified the university and The Giant Magellan Telescope Organization Corporation ("GMTO") 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 the university. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the interests of a governmental body in connection with competitive bidding and in certain other competitive situations. *See*

Open Records Decision No. 592 (1991). 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 claim the submitted information is protected in its entirety under section 552.104. You state the university, a system institution, will be one of a limited number of partners in the an organization designing and constructing with the aid and assistance of its partners. You state the university and its partners in the GMTO are competitors in the marketplace with regard to research discoveries and subsequent licensing of technologies discovered and patented in connection with the telescope. Additionally, you inform us the university, through its partnership with the GMTO, is involved in competition against other comparable research groups around the world for continued operational funding essential to project survival and completion. You inform us the responsive documents provide funding of the GMTO as well as details regarding technology and instruments that are part of the project, and if this information were publicly disclosed, it would undermine the university's ability to obtain necessary operation funding for the project and to market its research discoveries. Having considered your arguments, we find you have established the system has specific marketplace interests and release of the submitted information poses a specific threat of harm to the system's interests in a particular competitive situation. Therefore, we conclude the system may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup>

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](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

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 524874

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Margo Iwanski  
Assistant to the Vice President  
Office of the Vice President and CFO  
The University of Texas at Austin  
P.O. Box 8179  
Austin, Texas 78713-8179  
(w/o enclosures)

Mr. Patrick McCarthy  
GMTO Corporation  
P.O. Box 90933  
Pasadena, California 91109-0933  
(w/o enclosures)