



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2018

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-17347

Dear Ms. Ayala:

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# 719066 (OGC No. 182098).

The University of Texas Southwestern Medical Center (the "university") received a request for the blank form used and the data collected for the "ConTex injury database." You claim the some of the submitted information is excepted from disclosure under section 552.101.¹ Additionally, you state release of some of the submitted information may implicate the proprietary interests of Medical Innovations Labs (the "MIL"). Accordingly, you state, and provide documentation showing, you notified MIL of the request for information and of its right to submit arguments to this office as to why the information at issue 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 reviewed the submitted arguments and the submitted information, a portion of which consists of a representative sample.² We have received comments from MIL. We

¹We note the university failed to comply with section 552.301 of the Government Code with regard to its argument under section 552.101. *See* Gov't Code § 552.301(e). However, section 552.101 of the Government Code can provide a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.301, .302. Accordingly, we will consider your argument under this exception.

²We 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.

have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. MIL states it has competitors and asserts release of the information would reveal how MIL collects, sorts, and analyzes data, as well as the functionality of the MIL app. In addition, MIL states release of the submitted database information would provide a competitor with “an advantage in future governmental research contracts and the development of new technology and products to protect athletes.” After review of the information at issue and consideration of the arguments, we find MIL has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the database information under section 552.104(a) of the Government Code.³ As no exceptions to disclosure have been raised for the blank incident report form, the blank incident report form must be released.

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,



Michelle Garza
Assistant Attorney General
Open Records Division

MG/sb

³As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Ref: ID# 719066

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)