



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711

OR2015-13704

Dear Ms. Chaphekar:

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# 568271.

The Employees Retirement System of Texas (the "system") received a request for (1) the requestor's medical coverage and (2) documentation related to exact amounts the system paid to United Healthcare Services, Inc. ("UHC") for monthly administrative fees. Although you take no position as to whether the requested information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of UHC. Accordingly, you state, and provide documentation showing, you notified UHC of the request for information and of its right to submit arguments to this office as to why the requested 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 UHC. We have considered the submitted arguments and reviewed the submitted information.

We note you have only submitted documents pertaining to the category of the request relating to monthly administrative fees. However, you have not submitted any information responsive to the remaining category of the request. To the extent information responsive to the remaining portion of the request exists and was maintained by the system on the date it received the request, we assume the system has released it to the requestor. If the system

has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).

UHC notes the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-07506 (2012). In response to our ruling, UHC has filed a lawsuit against our office. See *United Healthcare Servs., Inc., LLC v. Attorney Gen. of Tex.*, No. D-1-GN-12-001661 (201st Dist. Ct., Travis County, Tex.). Accordingly, to the extent the submitted information is at issue in the pending litigation, we will allow the trial court to resolve whether the information at issue must be released to the public. To the extent the submitted information is not identical to the information at issue in the pending litigation, we will address UHC's arguments against disclosure.

UHC raises section 552.104 of the Government Code for the submitted information. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 13 (Tex. June 9, 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 17. UHC states the submitted information contains confidential and proprietary information, the release of which would have a negative effect on UHC's competitive bidding process. UHC argues revealing the submitted information would allow its direct competitors to injure UHC during future bids for similar contracts for health insurance solicited by the system and other governmental entities in Texas. Thus, UHC asserts release of its "competitive pricing information to [its] competitors would provide them with a significant, competitively injurious advantage in future bidding" and would severely harm UHC's ability to remain competitive in future bids. After review of the submitted information and consideration of the arguments, we find UHC has established the release of submitted information would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.¹

In summary, to the extent the submitted information is identical to the information at issue in the pending litigation mentioned above, we will allow the trial court to resolve whether the information at issue must be released to the public. However, to the extent the submitted information is not the information at issue in the pending litigation, the submitted information may be withheld under section 552.104(a) of the Government Code.

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

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,

A handwritten signature in black ink, appearing to read 'Mili Gosar', with a long horizontal flourish extending to the right.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 568271

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John S. Aissis
UnitedHealthcare
185 Asylum Street
Hartford, Connecticut 06103
(w/o enclosures)

