



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 10, 2015

Mr. Andrew Wipke  
Assistant District Attorney  
Wichita County District Attorney's Office  
Wichita County Courthouse  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2015-23596

Dear Mr. Wipke:

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# 586971 (ORR.760).

Wichita County (the "county") received a request for information pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Southern Health Partners, Inc. ("SHP") and Southwest Correctional Medical Group, Inc. ("SCMG"). Accordingly, you state, and provide documentation showing, 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 the Act in certain circumstances). We have received comments from an attorney representing SHP. We have reviewed the submitted information and the submitted arguments.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from

SCMG explaining why the submitted information should not be released. Therefore, we have no basis to conclude SCMG has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest SCMG may have in the information.

Next, we note SHP seeks to withhold information the county has not submitted to this office for review. This ruling does not address information that was not submitted by the county and is limited to the information submitted as responsive by the county. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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. SHP inform us it has competitors, including the requestor. In addition, SHP states the information at issue is part of a bid submitted to the county. SHP asserts the requestor is seeking the information at issue to gain a competitive advantage in future bids. After review of the information at issue and consideration of the arguments, we find SHP has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup> As no arguments have been raised for the remaining information, the county must release the remaining information.

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 consider the 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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/sb

Ref: ID# 586971

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Lisa B. Shoalmire  
Counsel for Southern Health Partners, Inc.  
Ross & Shoalmire  
1820 Galleria Oaks  
Texarkana, Texas 75503  
(w/o enclosures)

Southwest Correctional Medical Group, Inc.  
Attn: Legal Department  
6303 Goliad Avenue  
Dallas, Texas 75214  
(w/o enclosures)