



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2016-22601

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# 629493.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to specified contracts and agreements the system has with a specified entity. You state you released some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of United Health Care ("United"). Accordingly, you state, and provide documentation showing, you notified United of the request for information and of its 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 United. We have reviewed the submitted information and considered the submitted arguments.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The system represents the information at issue pertains to a competitive bidding situation. In addition, the system states release of the

submitted information would harm “[the system’s] contract negotiation process” and cause the system to agree to “less beneficial [contractual] terms to the detriment of its participants.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the information would give 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.<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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 629493

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.