



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 29, 2016

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-28658

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# 640020 (OGC# 172286).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to request for proposals number UTH16-0009. 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 360 Healthcare Solutions, Inc. ("360"); Altegra Health ("Altegra"); Care Communication, Inc. ("Care"); Diskriter; Managed Resources, Inc., d/b/a CodingAID ("CodingAID"); Navigant Healthcare Cymetrix ("Navigant"); Technical Youth, L.L.C., d/b/a Brooksource ("Brooksource"); Strategic Care Partners ("Strategic"); Technosoft Corporation ("Technosoft"); and VersoGenics, Inc., d/b/a Comforce ("Comforce"). Accordingly, you state, and provide documentation showing, you notified 360, Altegra, Care, Diskriter, CodingAID, Navigant, Brooksource, Strategic, Technosoft, and Comforce 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 CodingAID, a representative for Comforce, and Diskriter. We have reviewed the submitted information and the submitted arguments.

Initially, we note 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 360, Altegra, Care, Navigant, Brooksource, Strategic, or Technosoft explaining why the submitted information should not be released. Therefore, we have no basis to conclude 360, Altegra, Care, Navigant, Brooksource, Strategic, or Technosoft 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 university may not withhold the submitted information on the basis of any proprietary interest 360, Altegra, Care, Navigant, Brooksource, Strategic, or Technosoft may have in the information.

Next, we note the third parties argue against the release of information that was not submitted by the university. This ruling does not address information that was not submitted by the university and is limited to the information the university has submitted for our review. *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.”¹ Gov't Code § 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. CodingAID, Comforce, and Diskriter state they have competitors. In addition, CodingAID, Comforce, and Diskriter state release of portions of their information would cause harm to their competitive positions by providing an advantage to their competitors. CodingAID states it is the winning bidder with respect to the contract at issue. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after

¹Although Diskriter does not cite to section 552.104 of the Government Code in its brief, we understand Diskriter to raise this exception based on the substance of its argument.

a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find CodingAID, Comforce, and Diskriter have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the information at issue, which we have marked, under section 552.104(a) of the Government Code.²

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit

In summary, the university may withhold the information we marked under section 552.104(a) of the Government Code. The university must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

Ref: ID# 640020

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)