



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 13, 2017

Mr. Andrew Devine
Senior Associate Attorney
Dallas County Hospital District
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2017-00974

Dear Mr. Devine:

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# 641527 (DCHD# 16-70).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for information pertaining to specified request for proposals and contracts.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of ARUP Laboratories, Inc. ("ARUP"); Athena Diagnostics, Inc. ("Athena"); Baylor Miraca Genetics, LLC; Blood Center of Wisconsin, Inc.; Children's Medical Center of Dallas ("Children's Medical"); Compliance Concepts, Inc.; Dallas-Fort Worth Hospital Council Ventures, Inc.; Esoterix Genetic Laboratories, LLC ("Esoterix"); Mayo Collaborative Services, Inc.; Medfusion, LLC; Oxford Immunotec, Inc.; Quest Diagnostics Incorporated ("Quest"); Skill Survey, Inc. ("Skill"); and University of Texas Southwestern Medical Center at Dallas ("UTSWMC"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their rights to submit arguments to this office. *See Gov't Code §§ 552.304, .305(d); see also Open Records Decision No. 542 (1990)*

¹You note the system sought and received clarification of the request. *See Gov't Code § 552.222(b)* (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 on behalf of ARUP, Athena, Children's Medical, Esoterix, Quest, Skill, and UTSWMC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the representative of Skill claims the information submitted by the system is not responsive to the instant request. A governmental body must make a good-faith effort to relate to a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the system has reviewed its records and determined the documents it has submitted for Skill are responsive to the request. Thus, we find the system has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the system must release the information at issue to the requestor under the Act.

Next, 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 the remaining third parties, including Skill, explaining why the submitted information should not be released. Rather, the representative of Skill only claims the information is not responsive. *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 system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

ARUP, Athena, Esoterix, Quest, and UTSWMC assert the information they indicated is protected under section 552.104 of the Government Code. 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, the court concluded 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. ARUP, Athena, Esoterix, Quest, and UTSWMC state they have competitors. In addition, ARUP, Athena, Esoterix, Quest, and UTSWMC state the information at issue, if released, would give their competitors an unfair advantage. 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 a contract is executed. *Boeing*, 466 S.W.3d at 831, 842. After review of the information at issue and consideration of the arguments, we find ARUP, Athena, Esoterix, Quest, and UTSWMC have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information at issue, which we have marked, under section 552.104(a) of the Government Code.²

Section 552.110(b) of the Government Code protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Children’s Health claims portions of its information constitute commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Upon review, we find Children’s Health has failed to demonstrate the release of any of its information would cause it substantial competitive injury. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Additionally, we note the pricing information of a winning bidder, such as Children’s Health, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted from disclosure under section 552.110(b). *See* ORD 514; *see generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345. Further, the terms of a contract with a governmental body are

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

generally not excepted from public disclosure. See Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); ORD 541 at 8. Therefore, none of Children's Health's information may be withheld under section 552.110(b) of the Government Code.

In summary, the system may withhold the information we have marked under section 552.104 of the Government Code. The system 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, 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 641527

Enc. Submitted documents

c: Requestor
(w/o enclosures)

14 Third Parties
(w/o enclosures)