



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2017

Ms. Laurie Wainwright  
Senior Contracts Manager  
Harris County Purchasing Agent  
1001 Preston, Suite 670  
Houston, Texas 77002

OR2017-05248

Dear Ms. Wainwright:

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# 650570.

The Office of the Harris County Purchasing Agent (the "county") received two requests from different requestors for information pertaining to a specified request for proposals. The county does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the county states, and provides documentation showing, it notified the following third parties of the county's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released: Blue Cross Blue Shield of Texas ("BCBSTX"); Cigna Health & Life Insurance Co. and Cigna Behavioral Health, Inc. (collectively, "Cigna"); and United HealthCare Services, Inc. ("UHC"). *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 BCBSTX, Cigna, and UHC

objecting to the release of the submitted information. We have considered the submitted arguments and reviewed the submitted information.

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). 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, 841 (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.* BCBSTX, Cigna, and UHC state they have competitors. In addition, BCBSTX, Cigna, and UHC state release of the information at issue would cause them substantial competitive harm, and Cigna seeks to withhold the terms of a contract. 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 the *Boeing* decision, 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, 839. After review of the information at issue and consideration of the arguments, we find BCBSTX, Cigna, and UHC have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county 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.

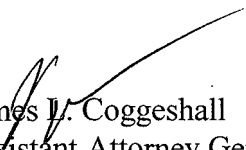
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>1</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.

[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,



James J. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 650570

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)