



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2017

Mr. Ryan Mitchell
Assistant City Attorney
Office of the City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2017-09656

Dear Mr. Mitchell:

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# 656406 (City of Arlington ORR No. 35223).

The City of Arlington (the "city") received two requests for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of CareATC ("Care"); CareHere, LLC; CareNow; Concentra; HealthStat; Marathon Health; Methodist Health System; Premise Health; Quad/Med, LLC; Texas Health Physicians Group ("Texas Health"); United Healthcare ("United"); Vera Whole Health; and WeCare, TLC. Accordingly, you state, and provide documentation showing, you notified the third parties of the requests for information and of their rights 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 Care, Concentra, Texas Health, and United. 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). 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). You state the submitted information pertains to an ongoing competitive bidding situation. You inform us the award pertaining to the request for proposals at issue has not been finalized and no contract has been executed. Thus, you state release of the submitted information would disadvantage the city and hinder the city’s ability to negotiate. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/nmd

Ref: ID# 656406

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.