



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2017

Ms. Andrea Slater Gulley
General Counsel
Amarillo Independent School District
7200 I-40 West
Amarillo, Texas 79106

OR2017-09984

Dear Ms. Gulley:

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# 657000.

The Amarillo Independent School District (the "district") received a request for records related to a specified request for proposals.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Aetna; BCBSTX/Dearborn Life/Prime Therapeutics ("BCBSTX"); Benecard Services, LLC; Caprock HealthPlans; Continental Benefits; Express Scripts; Health Plans, Inc. ("Health Plans"); Lifetime Benefit Solutions; MAXOR; Heritage Health Solutions ("Heritage"); ProAct, Inc.; and Arthur J. Gallagher & Co. Accordingly, you state, and provide documentation showing, you notified the specified third parties 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

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify 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 information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

circumstances). We have received comments from Aetna, BCBSTX, Health Plans, and Heritage. We have reviewed the submitted information and 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, 841 (Tex. 2015). The district represents the submitted information pertains to a competitive bidding situation. In addition, the district informs us the submitted information relates to a contract to provide pharmaceutical benefits management to the district where the district has awarded the bid. The district also states it requests bids for this service “at least once every three years.” The district contends release of the submitted information would give a prospective bidder an unfair competitive advantage by allowing it to undercut future bids, preventing the district from receiving the lowest bid possible. Upon review, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

²As our ruling is dispositive, we do not address the other arguments to withhold this information.

Ref: ID# 657000

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)