



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2017-11530

Dear Mr. Miles:

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# 659397 (HHSC ORR No. 12433).

The Texas Health & Human Services Commission (the "commission") received a request for information pertaining to the STAR Kids and STAR Health programs. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Superior HealthPlan Network ("Superior"). Accordingly, you state, and provide documentation demonstrating, you notified the third party of the request for information and of its right to

submit arguments to this office as to why the information at issue 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 Superior. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have reviewed the submitted representative sample of information<sup>1</sup> and considered 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). 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. Superior states it has competitors. In addition, Superior states release of the information it marked would undermine Superior’s position in the marketplace by allowing competitors to gain insight into Superior’s administrative and provider costs and the impact such costs have on Superior’s pricing. After review of the information at issue and consideration of the arguments, we find Superior has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information Superior marked under section 552.104(a) of the Government Code.<sup>2</sup> The commission 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](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

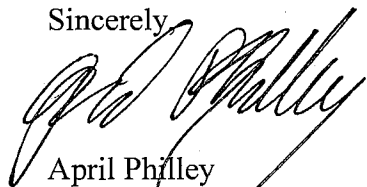
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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>As our ruling for this information is dispositive, we need not address remaining arguments against its disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely

A handwritten signature in black ink, appearing to read 'April Philley', written in a cursive style.

April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 659397

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)