



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2017

Mr. Andrew Devine
Senior Associate Attorney
Parkland Health & Hospital System
5200 Harry Hines Boulevard
Dallas, Texas 75235

OR2017-17872

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# 669800 (DCHD Nos. 17-44 and 14-52).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for the pricing information submitted by three specified companies in response to a specified Request for Proposals (the "RFP"). The system received a second request, from a different requestor, for all documentation authorized to be released by Open Records Letter No. 2017-10197 (2017) and all information that has been or will be released to any of the bidders who responded to the RFP. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Corporate Cost Control, Employers Edge ("Edge"), Employers Unity ("Unity"), and Matrix Claims Management. Accordingly, the system states, and provides documentation showing, it notified the third parties of the request 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 Edge and Unity. We have reviewed the submitted information and the submitted arguments.

Initially, the system informs us it has released the submitted contract to one of the bidders who responded to the RFP in response to a previous request for information. Edge argues

the submitted contract should not be released since the contract was erroneously released in response to the previous request for information. We note the second requestor seeks all information that has been released to any of the bidders who responded to the RFP. Additionally, we note a governmental body must make a good faith effort to relate a request to responsive information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find all of the documents the system submitted to be responsive to the request. We will therefore address the submitted arguments for the entirety of the submitted information. *See* Gov't Code § 552.007.

We note a portion of the second requestor's request seeks information that may be released in the future. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the request at issue consists of information that was in existence on the date the system received the second request.

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 only received arguments from Unity explaining why its information should not be released. Although we received comments from Edge, Edge did not raise any exceptions to disclosure under the Act or assert it has a protected proprietary interest in the responsive information. Therefore, we have no basis to conclude Edge or any of the remaining third parties has a protected proprietary interest in the submitted information, and the system may not withhold any portion of it on that basis. *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.

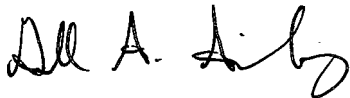
The submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-10197. In that ruling, we determined the system may withhold some of the information at issue under sections 552.104 and 552.111 of the Government Code and must release the remaining information at issue; however, any information subject to copyright may be released only in accordance with copyright law. We note Unity now seeks to withhold its pricing information, which has been previously ordered released, under section 552.104(a) of the Government Code. Although the law has changed with regard to a third party's right to assert section 552.104(a), *see*

Boeing Co. v. Paxton, 466 S.W.3d 831 (Tex. 2015), section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). We note section 552.104 of the Government Code does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the system may not now withhold any of the previously released information under section 552.104 of the Government Code on behalf of Unity. Accordingly, we conclude the system must continue to rely on Open Records Letter No. 2017-10197 as a previous determination and withhold or release the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 669800

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)