



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2017

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

OR2017-25663

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# 683602 (DCHD #17-66).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for information pertaining to a specified entity. You state you released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of nThrive Revenue Systems, LLC ("nThrive"). Accordingly, you state, and provide documentation showing, you notified nThrive of the request for information and of its 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 circumstances).* We have received comments from nThrive. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note nThrive argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the system submitted to us for our review. *See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information*

requested). Accordingly, this ruling is limited to the information the system submitted as responsive to the request for information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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, 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. nThrive states it has competitors. In addition, nThrive states the information at issue, if released, “would provide nThrive’s competitors with the information and resources necessary to replicate, undercut and significantly compromise nThrive’s business and pricing practices and harm nThrive.” 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 *Boeing*, 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 832. After review of the information at issue and consideration of the arguments, we find nThrive has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we indicated under section 552.104(a) of the Government Code.¹ The system must release the remaining information.

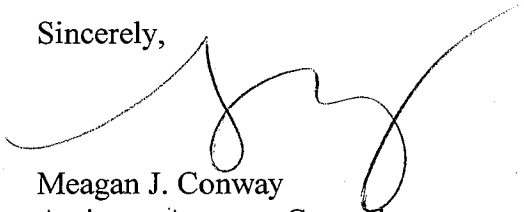
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we need not address nThrive’s remaining argument against disclosure of 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 683602

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)