



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Mr. Robert Spurck  
Counsel for the Medical Center Health System  
Reed, Claymon, Meeker & Hargett  
5608 Parkcrest Drive, Suite 200  
Austin, Texas 78731

OR2017-28319

Dear Mr. Spurck:

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# 685351 (Ref. No. 5029.0001).

The Ector County Hospital District d/b/a Medical Center Health System (the "system") received a request for a specified report submitted by Financial Resource Group, LLC ("FRG"), to the system. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state you notified FRG 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 id.* § 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 FRG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report that is subject to section 552.022(a)(1). The system must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the submitted information, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the system may not withhold the submitted information under section 552.111 of the Government Code. However, information encompassed by section 552.022 may be withheld under section 552.104. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). Further, we will consider FRG's argument under section 552.110 of the Government Code, as that exception makes information confidential under the Act for purposes of section 552.022. Accordingly, we will consider the applicability of sections 552.104 and 552.110 to 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." *Id.* § 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). The system and FRG each state they have competitors. The system indicates it has specific marketplace interests in the information at issue because it is constantly competing for the provision of hospital and clinical health care services. The system also states release of the information at issue would disadvantage the system by providing its competitors with information pertaining to its financial and operational strategies that would allow its competitors to implement similar strategies with no cost or effort to them. FRG states release of the information at issue would expose confidential terms, methodologies, and pricing, which would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find the system and FRG have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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 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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/tdw

Ref: ID# 685351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)