



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2017

Mr. Mack T. Harrison
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street, M525
Austin, Texas 78756-3199

OR2017-28403

Dear Mr. Harrison:

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# 689372 (DSHS File 27534).

The Texas Department of State Health Services (the "department") received a request for all correspondence pertaining to a specified case number between the department and U.S. Radiopharmaceuticals, Inc. ("USR") during a specified time period. The department states it has released some information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of USR. Accordingly, the department states, and provides documentation showing, it notified USR 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 USR. We have reviewed the submitted information and the submitted arguments.

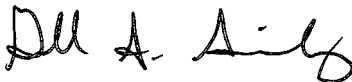
USR asserts some of the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may 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. USR states it has competitors. In addition, USR states “[c]ompetition within the medical radiological imaging field is fierce” and release of its information would “provide advantage to USR’s competitors of untold magnitude.” After review of the information at issue and consideration of the arguments, we find USR has established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information USR marked under section 552.104(a) of the Government Code.¹ The department 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, 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# 689372

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address USR’s remaining arguments against disclosure.