



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 2, 2019

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

OR2019-00076

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# 744415 (DCHD# 18-48).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received a request for line item details on purchase orders for the past two years from twenty specified vendors.<sup>1</sup> 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 third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>2</sup>

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<sup>1</sup>Parkland sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup>Parkland notified the following third parties: BD Biosciences and BD Diagnostics (collectively "BD"); Cardinal Health 414, LLC; CareFusion 2200, Inc. ("CareFusion" and "Vyaire"); DePuy Synthes CMF, DePuy Synthes Sales, Inc., and Johnson & Johnson HealthCare System, Inc. (collectively "DePuy"); DeRoyal Industries, Inc. ("DeRoyal"); Globus Medical, Inc. ("Globus"); Halyard Health ("Halyard"); Helmer, Inc.; Medline Industries, Inc.; Roche Diagnostics and Ventana Medical Systems, Inc. (collectively "Roche"); Smith & Nephew, Inc. ("Nephew"); Smiths Medical ASD, Inc. ("Smiths"); Teleflex Medical Incorporated; Vizient, Inc.; and Zimmer US, Inc. d/b/a Zimmer Biomet.

*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 BD, CareFusion, Vyaire, DePuy, DeRoyal, Globus, Halyard, Roche, Nephew, and Smiths. We have considered the submitted arguments and reviewed the submitted information. 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).

Initially, we note DePuy, Nephew, and Smiths argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what Parkland has submitted for our review. *See id.* § 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 Parkland submitted as responsive to the request for information.

Next, we note Globus argues its information is not responsive to the request for information. However, we note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because Parkland has submitted the information at issue for our review, we find it has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, Parkland may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

BD, CareFusion, DePuy, DeRoyal, Roche, Nephew, and Vyaire assert some of their information at issue is excepted from disclosure 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). 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. BD, CareFusion, DePuy, DeRoyal, Roche, Nephew, and Vyaire each state they have competitors. In addition, each of these third parties states release of the information at issue would provide their competitors with a substantial advantage in future bidding processes. 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 831, 839. After review of the information at issue and consideration of the arguments, we find BD, CareFusion, DePuy, DeRoyal, Roche, Nephew, and Vyaire have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude Parkland may withhold the information we indicated under section 552.104(a) of the Government Code.<sup>3</sup>

Halyard and Smiths argue some of their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1990).

Halyard and Smiths assert some of their information at issue consists of commercial or financial information the release of which would cause the companies substantial competitive harm under section 552.110(b) of the Government Code. We note Halyard and Smiths were winning bidders in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Act reasoning that disclosure of prices charged government is a cost of doing business with government). In addition, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3); Open Records Decision No. 541 at 8 (1990). Upon review, we find neither Halyard nor Smiths has established any of the remaining information constitutes commercial or financial information the disclosure of which would cause the companies substantial competitive harm. Accordingly, none of Halyard's or Smiths' information may be withheld under section 552.110(b) of the Government Code.

In summary, Parkland may withhold the information we indicated under section 552.104(a) of the Government Code. Parkland 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/mo

Ref: ID# 744415

Enc. Submitted documents

c: Requestor  
(w/o enclosures)