



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2019

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2019-00186

Dear Ms. Sheely:

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# 744610 (Document ID# 638308-1).

The Travis County Healthcare District d/b/a Central Health ("Central Health") received a request for communications involving seven named individuals pertaining to specified topics during a certain time period.¹ You indicate Central Health has 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 interests of the Limestone County Sheriff's Office; Meadows Mental Health Policy Institute; National Alliance on Mental Illness; Page Southerland Page, Inc. ("Page"); the Texas Health and Human Services Commission; the Texas Hospital Association; and several named individuals. Accordingly, you state, and provide documentation showing, Central Health notified these 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.² See

¹You state Central Health sought and received clarification of the information requested. See Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²As of the date of this letter, this office has not received comments from any of the named individuals explaining why any of the submitted information should not be released.

Gov't Code § 552.305(d); *id.* § 552.304 (interested party may submit comments stating why information should or should not be released); *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 Page. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the request for information because it was created outside of the time period specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and Central Health is not required to release this information in response to this request.

Next, 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 not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these third parties has a protected proprietary interest in the information at issue. *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. Accordingly, Central Health may not withhold any of the responsive information on the basis of any proprietary interest any of the remaining third parties may have in it.

Section 552.104(a) of the Government Code exempts 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. Page states it has competitors. In addition, Page states the release of its information would give its competitors an advantage by allowing its competitors to evaluate and potentially duplicate Page's bidding and contract materials. After review of the information at issue and consideration of the arguments, we find Page has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude Central Health may withhold Page's information under section 552.104(a) of the Government Code.³

³As our ruling is dispositive, we need not address Page's remaining argument against disclosure of this information.

In summary, this ruling does not address the public availability of any information that is not responsive to the request, and Central Health is not required to release such information in response to this request. Central Health may withhold Page's information under section 552.104(a) of the Government Code. Central Health must release the remaining responsive 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 744610

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 9 Third Parties
(w/o enclosures)