



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2019

Ms. Alice McAfee
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2019-02623

Dear Ms. McAfee:

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# 747981 (Ref. No. Health Management 19-1).

The Teacher Retirement System of Texas (the "system") received a request for three specified contracts. You state you have released some information. You claim some of the submitted information may be protected by copyright. Additionally, you state release of the submitted information may implicate the proprietary interests of CaremarkPCS Health, L.L.C. ("Caremark") and SilverScript Insurance Company ("SilverScript"). Accordingly, you state, and provide documentation showing, you notified Caremark and SilverScript of the request and their rights to submit arguments to this office. *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 an attorney on behalf of Caremark and SilverScript. We have considered the submitted arguments and have reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2017-28511 (2017). In response to Open Records Letter No. 2017-28511, Caremark filed a lawsuit against our office. *See CaremarkPCS Health, L.L.C. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-17-006839 (250th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the

information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. However, we will consider the public availability of the remaining information not subject to the pending litigation.

We note the remaining information consists of information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The remaining contract and the contracts to which the amendments at issue pertain are valued at more than \$15,000, are between the system, which is a state agency, and a private vendor for the purchases of services, and are not expired or completed. *See id.* §§ 2261.002(2) (“state agency” has meaning assigned by Gov’t Code § 2151.002), 2151.002(3) (“state agency” includes university system or institution of higher education as defined by Educ. Code § 61.003). Caremark and SilverScript seek to withhold portions of the information at issue under sections 552.104 and 552.110 of the Government Code. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the system may not withhold the remaining information at issue under section 552.104 or section 552.110 of the Government Code.

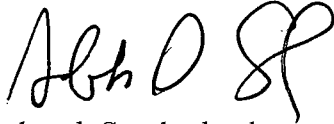
In summary, with regard to the information at issue in *CaremarkPCS Health, L.L.C. v. Ken Paxton, Attorney Gen. of Tex.*, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. The system must release the remaining information at issue pursuant to section 2261.253 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Deborah Southerland', written in a cursive style.

Deborah Southerland
Attorney
Open Records Division

DS/eb

Ref: ID# 747981

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)