



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Ms. Kendra Thomas
Managing Attorney
The Harris Center for Mental Health and IDD
9401 Southwest Freeway, 10th Floor
Houston, Texas 77074

OR2019-05747

Dear Ms. Thomas:

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# 752987.

The Harris Center for Mental Health and IDD (the "center") received a request for a specified proposal submitted for the EHR/RCM Project, 19/001. Although the center takes no position as to whether the submitted information is excepted under the Act, the center states release of the submitted information may implicate the proprietary interests of Harris Health System (the "system"). Accordingly, the center states, and provides documentation showing, it notified system of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from system. We have also received comments from Epic Systems Corporation ("Epic"). *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 reviewed the submitted arguments and the submitted information.

Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Epic argues some of the requested information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. We find the information at issue has significance other than its use as a tool for the maintenance, manipulation, or protection of public property. Accordingly, we conclude the information is "public information" as defined by section 552.002, and it is subject to disclosure under the Act. We will consider the arguments against disclosure of that information.

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. Epic states it has competitors. In addition, Epic states release of the submitted information would cause it harm. After review of the information at issue and consideration of the arguments, we find Epic has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the center may withhold the submitted information under section 552.104(a) of the Government Code.¹

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.

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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 "Michelle Garza". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 752987

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)