



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 12, 2019

Mr. Frank J. Garza
General Counsel for the Center for Health Care Services
Davidson Troilo Ream & Garza, PC
601 North West Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2019-09901

Dear Mr. Garza:

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# 759080.

The Center for Health Care Services (the "center") received a request information pertaining to RFP 2018-015, Electronic Health Records. You state you have released some information to the requestor. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Behavioral Health Industry d/b/a Open Minds; Berry Dunn McNeil & Parker, LLC d/b/a Berry Dunn; Health Management Associates, Inc.; Leidos Health, LLC; NTT DATA Services, LLC d/b/a NTT DATA; Plante & Moran, PLLC; and Pivot Pont Consulting, LLC ("PPC"). Accordingly, you state you notified the third parties of the requests for information and of their right to submit arguments to this office as to why the information at issue should not be released.¹ *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

¹We note the center did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

explain applicability of exception in the Act in certain circumstances). We have received comments from PPC. We have considered the submitted arguments and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the remaining third parties have not submitted arguments to this office. Thus, we have no basis for concluding the submitted information constitutes proprietary information of any of the remaining third parties. See 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, 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, the center may not withhold any of the submitted information on the basis of any proprietary interests the remaining notified third parties may have in it.

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. PPC states it has competitors. In addition, PPC states release of the information at issue would cause the company harm. After review of the information at issue and consideration of the arguments, we find PPC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the center may withhold the information we have marked under section 552.104(a) of the Government Code.²

We note portions of the remaining information are subject to section 552.136 of the Government Code.³ Section 552.136 states, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); see also *id.* § 552.136(a) (defining "access device"). This office has

²As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the center must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

PPC also asserts the e-mail addresses it has indicated are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address contained in a response to a request for bids or proposals. *See id.* § 552.137(c)(3). Upon review, we find the e-mail addresses at issue are specifically excluded by section 552.137(c)(3). *See id.* Thus, the center may not withhold this information under section 552.137.

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

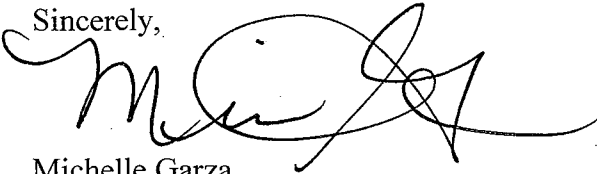
In summary, the center may withhold the information we have marked under section 552.104(a) of the Government Code. The center must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The center must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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 'Michelle Garza', with a large, stylized initial 'M' and 'G'.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 759080

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)