



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-10846

Dear Mr. Miles:

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# 761771 (HHSC Reference OR-20190204-17603).

The Texas Health and Human Services Commission (the "commission") received a request for "all communications between commission staff and representatives of Superior HealthPlan related to affiliate reports, Form Bs, affiliate subcontracts and/or corporate allocations between May 1, 2017 and October 31, 2017." Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Superior HealthPlan, Inc. ("Superior"). Accordingly, you inform us the commission notified Superior of the request and the right 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 received comments from Superior. We also received comments from 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). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Superior states it has competitors. Superior argues release of the information at issue would enable competitors to gain insight into and develop business strategies that would undermine Superior’s position in the marketplace, to gain insight into Superior’s administrative and provider costs and the impact such costs have on its pricing, and to have access to provider reimbursement information that would aid competitors in seeking better pricing with providers. After review of the information at issue and consideration of the arguments, we find Superior has established the release of the information at issue would give advantage to competitors or bidders. Thus, the commission may withhold the information at issue, which we indicated, under section 552.104(a) of the Government Code.¹

Section 552.136 of the Government Code states, “Notwithstanding 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.”² Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Upon review, the commission must withhold the information we indicated under section 552.136.

In summary, the commission may withhold the information we indicated under section 552.104 of the Government Code. The commission must withhold the information we indicated under section 552.136 of the Government Code. The commission 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Sean Nottingham". The signature is written in a cursive, flowing style.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/jxd

Ref: ID# 761771

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)