



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Mr. Andrew Devine
Senior Associate Attorney
Parkland Health & Hospital System
5200 Harry Hines Boulevard
Dallas, Texas 75235

OR2019-11775

Dear Mr. Devine:

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# 763308 (DCHD#19-09).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for information pertaining to a specified request for proposals, including the awarded contract, the winning proposal, and evaluation 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 proprietary interests of BCA Financial Services, Inc. ("BCA"); Convergent Revenue Cycle Management; Data Search Collection, Inc. ("Data"); I.C. System, Inc. ("ICS"); MedData; Meduit Group, LLC ("Meduit"); MiraMed Virtual Recovery, LLC ("MiraMed"); Paragon Revenue Group ("Paragon"); TTS Technologies; and United Collection Bureau, Inc. ("United"). Accordingly, you state, and provide documentation showing, you notified these interested 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. *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 BCA, Data, ICS, MedData, Meduit, MiraMed, and Paragon. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note ICS and Paragon only object to disclosure of information the system has not submitted to this office for review. BCA, Data, MedData, and Meduit also object to disclosure of information the system has not submitted to this office for review. This ruling does not address information that was not submitted by the system and is limited to the information the system has submitted for our review.¹ *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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, the system may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note some of the information at issue was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-03124 (2019). In that ruling, in relevant part, we determined the system may withhold the information we indicated under section 552.104 of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the system may continue to rely on Open Records Letter No. 2019-03124 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As we are able to make this determination, we need not address MiraMed's submitted arguments against release of this information. However, we will consider the submitted arguments for the submitted information not subject to the previous ruling.

¹As we are able to make this determination, we need not address the remaining arguments against disclosure of this 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. BCA, Data, MedData, Meduit, and MiraMed each state they have competitors. In addition, BCA, Data, MedData, Meduit, and MiraMed state release of the information at issue would give advantage to their competitors. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find BCA, Data, MedData, Meduit, and MiraMed have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we have marked under section 552.104(a) of the Government Code.²

In summary, the system may continue to rely on Open Records Letter No. 2019-03124 as a previous determination and withhold or release the information at issue in accordance with that ruling. The system may withhold the information we have marked under section 552.104(a) of the Government Code. The system 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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 763308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 10 Third Parties
(w/o enclosures)