



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2019

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

OR2019-18515

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# 774046 (HHSC Ref. Nos. ORR-18272 & ORR-18487).

The Texas Health and Human Services Commission (the "commission") received a request for four categories of information relating to Request for Proposals ("RFP") 527-17-0012. The commission claims the information responsive to this request is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. Additionally, the commission states release of this information may implicate the proprietary interests of Change Healthcare Pharmacy Solutions, Inc. ("Change") and Magellan Medicaid Administration, Inc. ("Magellan"). The commission received a second request from the same requestor for three categories of information relating to Request for Information HHS0003977. Although the commission takes no position as to whether the information responsive to the second request is excepted under the Act, the commission states release of this information may implicate the proprietary interests of Change; Magellan; MedImpact; and OptumRx. Accordingly, the commission states, and provides documentation showing, it notified each third party of the respective requests for information and of its right to submit arguments to this office as to why the information at issue 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 Change regarding both requests and Magellan regarding the second request. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from MedImpact or OptumRx explaining why their information at issue should not be released. Therefore, we have no basis to conclude MedImpact or OptumRx has a protected proprietary interest in their information at issue, and the commission may not withhold any portion of it on that basis. *See id.* § 552.110; 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.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The commission represents the information relating to RFP 527-17-0012 pertains to a competitive bidding situation. The commission informs us the original procurement was cancelled. The commission explains it is in the process of issuing a new RFP for the same services. The commission contends release of the information at issue "would weaken [its] position in the bidding for the new contract at issue[.]" After review of the information at issue and consideration of the arguments, we find the commission has established the release of this information would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information relating to RFP 527-17-0012 under section 552.104(a) of the Government Code.¹

Change and Magellan each assert portions of the remaining information are protected under section 552.104 of the Government Code. In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, a private third party may invoke this exception. *Id.* Change and Magellan state they have competitors. In addition, Change and Magellan state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Change and Magellan have established the release of their information at issue would give advantage to a

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

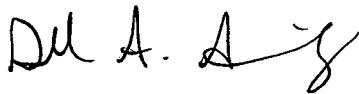
competitor or bidder. Thus, we conclude the commission may withhold the information we have indicated under section 552.104(a) of the Government Code.²

In summary, the commission may withhold the information relating to RFP 527-17-0012 under section 552.104(a) of the Government Code. The commission may withhold the information we have indicated under section 552.104(a) 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 774046

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

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