



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2019

Ms. Kendra Thomas
General Counsel
Harris Center for Mental Health and IDD
9401 Southwest Freeway
Houston, Texas 77074

OR2019-18780

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# 774998.

The Harris Center for Mental Health and IDD (the "center") received a request for information pertaining to a specified request for proposals. 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 interests of Cerner Corporation ("Cerner"); Harris County Hospital District d/b/a Harris Health System ("Harris Health"); and Netsmart Technologies, Inc. ("Netsmart"). Accordingly, you state, and provide documentation showing, you notified the 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 §§ 552.304; 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 Cerner, Harris Health, and Netsmart. We have also received comments from Epic Systems Corporation ("Epic"). *See Gov't Code § 552.305(d)*. We have reviewed the submitted information and considered the submitted arguments.

Initially, you state and we agree, some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2019-05747 (2019) and 2019-08098 (2019). We have no indication the law, facts, or

circumstances on which the prior rulings were based have changed. Accordingly, the center may continue to rely on Open Records Letter Nos. 2019-05747 and 2019-08098 as previous determinations and withhold or release the information at issue in accordance with those rulings.¹ 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

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. Cerner and Netsmart state they have competitors. In addition, Cerner and Netsmart state release of the information at issue would cause competitive harm. After review of the information at issue and consideration of the arguments, we find Cerner and Netsmart have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the center may withhold the portions of Cerner’s information we indicated and all of Netsmart’s information under section 552.104(a) of the Government Code.²

We note some of the remaining materials at issue may be protected by copyright. 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 continue to rely on Open Records Letter Nos. 2019-05747 and 2019-08098 as previous determinations and withhold or release the information at issue in accordance with those rulings. The center may withhold the portions of Cerner’s information we indicated and all of Netsmart’s information under section 552.104(a) of the Government Code. The center must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

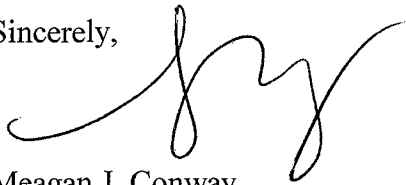
¹As we are able to make this determination, we need not address Epic’s and Harris Health’s arguments against disclosure of this information.

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



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/be

Ref: ID# 774998

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)