



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 13, 2019

Mr. Robert Spurck  
Counsel for Somervell County Hospital District  
Reed, Claymon, Meeker & Hargett, PLLC  
5608 Parkcrest Drive, Suite 200  
Austin, Texas 78731-4999

OR2019-22371

Dear Mr. Spurck:

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# 777278.

The Somervell County Hospital District (the "district"), which you represent, received a request for specified agreements and contracts between the district and certain ancillary clinics.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Although the district takes no position as to whether the remaining information is excepted under the Act, the district informs us release of this information may implicate the proprietary interests of third parties. Accordingly, the district states, and provides documentation showing, it notified the third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released.<sup>2</sup> *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

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<sup>1</sup>We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>The notified third parties are: Ambulatory Surgical Institute of Dallas, LLC; Select Ambulatory Surgical Center of Fort Worth, LLC; and I-35 Capital Cleburne Imaging, LP, I-35 Capital Cleburne, LP, I-35 Capital Edge PT, LP, I-35 Capital GR PT O, LP, I-35 Capital Select GR, LLC, I-35 Capital SourceOne PT, LP, and I-35 Capital Velocity PT, LP (collectively the "I-35 Entities").

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 the I-35 Entities. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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, 841 (Tex. 2015). We understand the district to assert it has a specific marketplace interest in the information at issue because the district is competing with other medical facilities. In addition, the district states disclosure of the information at issue "would provide the district's competitors an advantage by providing a detailed glimpse into the strategies used to manage and operate certain district facilities, thereby allowing competitors to implement similar strategies in their businesses and to benefit from the district's and its manager's efforts and resources to manage and operate the facilities at no cost or effort to the competitor." 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 governmental body 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 831, 839. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information you indicated under section 552.104(a) of the Government Code.<sup>3</sup> Accordingly, the district 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](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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/mo

Ref: ID# 777278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address the I-35 Entities' arguments against disclosure of this information.