



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2019

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

OR2019-25850

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# 785837 (Ref. No. 18886).

The Texas Health and Human Services Commission (the "commission") received a request for specified algorithms, formulas, and incentive programs pertaining to specified programs. 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 MAXIMUS.¹ Accordingly, you state, and provide documentation showing, you notified MAXIMUS of the request for information and of its 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 MAXIMUS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

¹ We note, and you acknowledge, the commission did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1990).

MAXIMUS contends its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find MAXIMUS has demonstrated its information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the commission must withhold the submitted information under section 552.110(b) of the Government Code.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 785837

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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