



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Taylor Cooper
Director—Legal Affairs
Community Health Choice
2636 South Loop West, Suite 125
Houston, Texas 77054

OR2019-28390

Dear Ms. Cooper:

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# 790581.

Community Health Choice, Inc. (the "Community") received a request for information pertaining to a specified contract.¹ Community states it has released some information. Community further states it has no information responsive to a portion of the request.² Community claims the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Community also states release of the submitted information may implicate the proprietary interests of Carenet Healthcare Services ("Carenet"). Accordingly, Community states, and provides documentation showing, it notified Carenet of the request and of its right to submit arguments to this office. *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

¹ Community sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See* *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 452 at 3 (1986), 362 at 2 (1983).

to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-18771 (2019). In that ruling, we determined Community may withhold the submitted information under section 552.104(a) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, Community must continue to rely on Open Records Letter No. 2019-18771 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider the exceptions you raise for the remaining submitted 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). 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). Community represents the information at issue pertains to a competitive bidding situation, and we understand Community to assert it will be negotiating contracts for similar goods or services again in the foreseeable future. In addition, Community states release of the pricing information would place Community at a competitive disadvantage. 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 841. Upon review of the information at issue and consideration of the arguments, we find Community has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude Community may withhold the remaining information under section 552.104(a) of the Government Code.³

³ As our ruling is dispositive, we need not address Community’s remaining argument against disclosure of the submitted information.

In summary, Community must continue to rely on Open Records Letter No. 2019-18771 as a previous determination and withhold or release the information at issue in accordance with that ruling. Community may withhold the remaining information under section 552.104(a) of the Government Code.

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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 790581

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)