



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 3, 2019

Ms. Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
4616 West Howard Lane, Building 2, Suite 350  
Austin, Texas 78728

OR2019-33919

Dear Ms. Marsh

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# 797218 (PIA# 2019-0018).

The Texas Civil Commitment Office (the "TCCO") received a request for seven categories of information pertaining to medical care and existing contracts. You state the TCCO will release some information. You state the TCCO does not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. Additionally, the TCCO states release of the information at issue may implicate the proprietary interests of Management & Training Corporation ("MTC") and Texas Tech University Health Sciences Center ("TTUHSC"). Accordingly, the TCCO states, and provides documentation showing, it notified these interested third parties of the request for information and of their 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 to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from MTC and TTUHSC. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, you state the information responsive to category one of the request was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-16147 (2019). You state the law, facts, or circumstances on which the prior ruling was based have not changed. Accordingly, the TCCO must continue to rely on Open Records Letter No. 2019-16147 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the remaining arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2019-16147.

Next, we note TTUHSC argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the TCCO has submitted to us for our review. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the TCCO submitted as responsive to the request for information.

MTC asserts its information at issue is excepted from public disclosure under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). 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. *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. MTC states it has competitors. In addition, MTC explains release of the information it indicated would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find MTC established the release of the information at issue would give an advantage to a competitor or bidder. Accordingly, we conclude the TCCO may withhold the information responsive to categories 3 and 4 under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, the TCCO must continue to rely on Open Records Letter No. 2019-16147 as a previous determination and withhold or release the identical information in accordance with that ruling. The TCCO may withhold the information responsive to categories 3 and 4 under section 552.104(a) of the Government Code. The TCCO must release the remaining information.

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

<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments 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 <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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/gw

Ref: ID# 797218

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)