



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Ms. Carey Smith
Senior Attorney
Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-00773

Dear Ms. Smith:

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# 804994 (HHSC Ref. ORR No. 20090).

The Texas Health and Human Services Commission (the "commission") received a request for the awarded contracts resulting from three specified solicitations. Although the commission takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Texas Children's Health Plan ("TCHP"); Blue Cross and Blue Shield of Texas ("BCBS"); Driscoll Health Plan; Children's Medical Center Health Plan; Cook Children's Health Plan; Community First Health Plans; Aetna Better Health; Amerigroup; Cigna-HealthSpring; Superior Health Plan, Inc.; and UnitedHealthcare Community Plan. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in

certain circumstances). We have received comments from TCHP and BCBS.¹ 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) 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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Next, we note TCHP objects to disclosure of information the commission has not submitted to this office for review. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note some of the submitted information is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Id. § 2261.253(a)(1). We note contract numbers 529-13-0071-00001, 529-13-0071-00004, 529-13-0071-00005, 529-13-0071-00006, 529-13-0071-00007, 529-13-0071-00008, and 529-13-0071-00009 are valued at more than \$15,000; are between the commission, which is a state agency, and private vendors for the purchase of goods or services; and the contracts are not expired or completed. *See id.* § 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002(3)). BCBS and TCHP seek to withhold some of the information at issue under sections 552.101, 552.104, and 552.110 of the Government Code. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623

¹ We note we have received comments from Amerigroup, but it claims no exceptions and does not make arguments against disclosure of the submitted information.

at 3 (1994), 525 at 3 (1989). Accordingly, the commission may not withhold any portion of the contracts at issue under sections 552.101, 552.104, or 552.110 of the Government Code. Consequently, the commission must release contract numbers 529-13-0071-00001, 529-13-0071-00004, 529-13-0071-00005, 529-13-0071-00006, 529-13-0071-00007, 529-13-0071-00008, and 529-13-0071-00009 in their entireties pursuant to section 2261.253 of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the commission must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the commission may not withhold the information at issue under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Open Records Decision No. 684 (2009). Accordingly, the commission

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

must withhold the bank account numbers, routing numbers, and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. 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 commission must release contract numbers 529-13-0071-00001, 529-13-0071-00004, 529-13-0071-00005, 529-13-0071-00006, 529-13-0071-00007, 529-13-0071-00008, and 529-13-0071-00009 in their entireties pursuant to section 2261.253 of the Government Code. To the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the commission must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. The commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The commission must withhold the bank account numbers, routing numbers, and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The commission must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 804994

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)