



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Ms. Megan N. Anson
Staff Attorney
Community Health Choice
2636 South Loop West, Suite 900
Houston TX 77054

OR2020-02622

Dear Ms. Anson:

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# 808480.

Community Health Choice, Inc. ("Community") received a request for a specified contract. Community claims the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Community also states release of the submitted information may implicate the proprietary interests of Heidrick & Struggles ("Heidrick"). Accordingly, Community states, and provides documentation showing, it notified Heidrick 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 to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Heidrick. We have considered the claimed exceptions reviewed the 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 states it will be negotiating contracts for similar goods or services again in the foreseeable future. In addition, Community states release of the contract 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 submitted information under section 552.104(a) of the Government Code.¹

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/gw

Ref: ID# 808480

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.