



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2020

Mr. Skyler L. Shafer
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

OR2020-03340

Dear Mr. Shafer:

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# 810234 (BON Ref. No. 20-04).

The Texas Board of Nursing (the "board") received a request for the winning bid pertaining to a specified request for proposals. Although the board takes no position as to whether the submitted information is excepted under the Act, the board states release of the submitted information may implicate the proprietary interests of RecoveryTrek LLC ("RecoveryTrek"). Accordingly, the board states, and provides documentation showing, it notified RecoveryTrek 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 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 RecoveryTrek explaining why the submitted information should not be released. Accordingly, we have no basis to conclude RecoveryTrek has a protected proprietary interest in the submitted information, and the board may not withhold any portion of it on that basis. *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. Consequently, the board must release the submitted 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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent part.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 810234

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)