



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 26, 2020

Ms. Kristi Godden  
Counsel for the Pharr-San Juan-Alamo Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701

OR2020-06184

Dear Ms. Godden:

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# 813576 (Ref. No. PSJA-19-008).

The Pharr-San Juan-Alamo Independent School District (the "district"), which you represent, received a request for two categories of financial information pertaining to a specified medical plan. Although you take no position regarding whether the submitted information is excepted from disclosure under the Act, you inform us its release may implicate the proprietary interests of Blue Cross Blue Shield of Texas ("BCBSTX") and United HealthCare Services, Inc. ("United"). Accordingly, you state, and provide documentation showing, the district notified these third parties of the request for information and of their rights 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 BCBSTX and United. We have considered the submitted arguments and reviewed the submitted information.

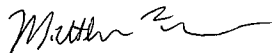
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of 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. BCBSTX and United each state they have competitors. In addition, BCBSTX and United each explain release of their information at issue would provide an advantage to its competitors. We note BCBSTX and United seek to withhold the terms of contracts. 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 third party 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 839. After review of the information at issue and consideration of the arguments, we find BCBSTX and United have established the release of the information at issue would give an advantage to a competitor or bidder. Accordingly, we conclude the district may withhold United’s information in its entirety and the information we indicated under section 552.104(a) of the Government Code.<sup>1</sup> The district must release the remaining 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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/be

---

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

Ref: ID# 813576

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)