



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 27, 2020

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711-3247

OR2020-06338

Dear Mr. Miles:

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# 814009 (HHSC Reference ORR No. 20579).

The Texas Health and Human Services Commission (the "commission") received a request for certain information pertaining to a specified request for proposals. You state the commission will release some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of several third parties.<sup>1</sup> 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 information at issue 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 received comments from AmeriGroup, AmeriHealth, BCBSTX, Children's Medical Center, Community First, Cook's Children, Dell Children's, Driscoll, El Paso, First Care, Magellan, Molina,

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<sup>1</sup> Aetna Better Health of Texas, Inc.; AmeriGroup Insurance Company ("AmeriGroup"); AmeriHealth Caritas Texas, Inc. ("AmeriHealth"); Health Care Services Corporation d/b/a Blue Cross and Blue Shield of Texas ("BCBSTX"); Children's Medical Center Health Plan ("Children's Medical Center"); Community First Health Plans, Inc. ("Community First"); Community Health Choice; Cook Children's Health Plan ("Cook's Children"); Seton Health Plan, Inc. d/b/a/ Dell Children's Health Plan ("Dell Children's"); Driscoll Health Plan ("Driscoll"); El Paso Health ("El Paso"); SHA, LLC d/b/a First Care Health Plans ("First Care"); Humana; Juntos; Magellan Complete Care of Texas ("Magellan"); Molina Healthcare of Texas, Inc. ("Molina"); Parkland Community Health Plan, Inc. ("Parkland"); Scott and White Health Plan ("Scott and White"); Superior Health Plan, Inc. ("Superior"); Texas Children's Health Plan ("Texas Children's"); United Healthcare ("United"); and WellCare of Texas, Inc. ("WellCare").

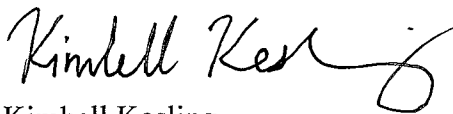
Parkland, Scott and White, Superior, Texas Children's, United, and WellCare.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

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). 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). You state the submitted information pertains to a request for proposals that was cancelled and no contract was awarded. In addition, you state the commission has rebid the request for proposals at issue, but a contract for this specific procurement has not been awarded. You represent release of the information at issue would give bidders a competitive advantage and undermine the competitive bidding process. After review of the information at issue and consideration of the arguments, we find the commission has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the commission may withhold the submitted information under section 552.104(a) of the Government Code.<sup>3</sup>

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,



Kimbell Kesling  
Attorney  
Open Records Division

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<sup>2</sup> We note Community First, First Care, El Paso, Magellan, and Scott and White raise section 552.1101 of the Government Code. The Eighty-sixth Legislature amended chapter 552 of the Government Code to include section 552.1101. Gov't Code § 552.1101. However, the amended law applies only to a request for information that the governmental body receives on or after January 1, 2020, the effective date of the amendment. *Id.* A request for information received before the effective date of the amendment is governed by the law in effect on the date the governmental body received the request. Here, the commission received the request on December 2, 2019. Therefore, we do not address Community First's, First Care's, El Paso's, Magellan's, or Scott and White's arguments under section 552.1101.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 814009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

23 Third Parties  
(w/o enclosures)