



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2020

Mr. Ryan Kerr
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2020-12545

Dear Mr. Kerr:

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# 825874 (OP-20-0062).

El Paso County (the "county") received a request for information pertaining to health care service contracts at the county jail for a specified period of time.¹ Although the county takes no position regarding whether the submitted information is excepted from disclosure, the county state its release may implicate the proprietary interests of Emergence Healthcare Network ("Emergence"); The University of Texas Medical Branch at Galveston ("UTMB"); and the University Medical Center of El Paso (the "university"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and the right to submit arguments to this office. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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). The county states Emergence does not object to the release of its information. We have received comments

¹ The county states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

from UTMB.² We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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, 841 (Tex. 2015). UTMB states it has specific marketplace interests in the information at issue because it is competing in the healthcare marketplace. In addition, UTMB states release of the information it marked would harm UTMB’s ability to compete in the marketplace with other providers of similar products and services. After review of the information at issue and consideration of the arguments, we find UTMB has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information UTMB marked under section 552.104(a) of the Government Code. The county 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/be

² As of the date of this letter, we have not received from the university explaining why any portion of the responsive information should not be released to the requestor.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)