



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2020

Ms. Leni Kirkman  
Senior Vice President  
University Health System  
4502 Medical Drive  
San Antonio, Texas 78229

OR2020-15652

Dear Ms. Kirkman:

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# 828842.

The University Health System (the "system") received a request for proposals submitted in response to request for proposals number 219-01-006-SVC. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Ameritas Life Insurance Corporation ("Ameritas"); Dearborn Life Insurance Company ("Dearborn"); EyeMed Vision Care, LLC ("EyeMed"); Insurance and Retirement Solutions, Inc. d/b/a Benefit Source; Davis Vision, Inc.; Metropolitan Life Insurance Company; Superior Vision Services, Inc.; United Healthcare Specialty Benefits; and Vision Service Plan ("VSP"). Accordingly, the system states, and provides documentation showing, it notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *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 received comments from Ameritas, Dearborn, EyeMed, and VSP. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note the system did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we understand VSP to argue a portion of its submitted information is not responsive to the instant request. We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). In this instance, the system submitted the information at issue as responsive to the request. Upon review, we find all of the submitted documents are responsive to the request. We will therefore address VSP's claimed exceptions to disclosure of the information at issue.

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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Dearborn, EyeMed, and VSP raise section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information 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." *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address Dearborn's, EyeMed's, and VSP's arguments under section 552.104 of the Government Code.

Dearborn, EyeMed, and VSP raise section 552.110 of the Government Code for their information at issue.<sup>2</sup> Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence

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<sup>2</sup> Although Dearborn, EyeMed, and VSP cite to former section 552.110(a) of the Government Code in their brief, we understand them to raise current section 552.110(b) of the Government Code based on the substance of their arguments. Further, although EyeMed cites to former section 552.110(b) of the Government Code in their brief, we understand it to raise current section 552.110(c) of the Government Code based on the substance of its arguments.

that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

*Id.* § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). EyeMed argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find EyeMed has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the system must withhold the information we marked under section 552.110(c) of the Government Code.<sup>3</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find EyeMed has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the system may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Dearborn, EyeMed, and VSP argue some of their information consists of trade secrets subject to section 552.110(b). Upon review, we find Dearborn and VSP have demonstrated portions of their information at issue constitute trade secrets. Accordingly, the system must withhold the information we marked under section 552.110(b) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Additionally, we find Dearborn, EyeMed, and VSP have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the system may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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<sup>3</sup> As our ruling is dispositive, we need not address EyeMed’s remaining argument against disclosure of this information.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Upon review, we find Ameritas has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the system may not withhold it on that basis.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>4</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the system must withhold all insurance policy numbers within the submitted information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental

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<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system must withhold the information we marked under section 552.110(c) of the Government Code. The system must withhold the information we marked under section 552.110(b) of the Government Code. The system must withhold all insurance policy numbers within the submitted information under section 552.136 of the Government Code. The system must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Katie Stallcup  
Attorney  
Open Records Division

AKS/gw

Ref: ID# 828842

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)