



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Mr. Frank J. Garza
Counsel for the Center for Health Care Services
Davidson Troilo Ream & Garza, PC
601 Northwest Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2020-16520

Dear Mr. Garza:

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# 833644.

The Center for Health Care Services (the "center"), which you represent, received a request for information pertaining to request for quotes 2018-002. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of VHS San Antonio Partners, LLC d/b/a Baptist Medical Center ("VHS"); Nix Hospital Systems, LLC; and Southwest General Hospital, LP. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 VHS. We have considered the submitted arguments and 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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has 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 center may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

VHS asserts its information is excepted from disclosure under section 552.112 of the Government Code. However, section 552.112 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied) (section 552.112 is permissive exception that governmental body may waive in its discretion); Open Records Decision No. 522 (1989) (discretionary exceptions in general). The center did not assert section 552.112. Therefore, the center may not withhold any of the information at issue pursuant to section 552.112.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See Attorney General Opinion H-1274* (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See 26 U.S.C. § 6103(b)(2)(A)*. Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted income tax returns constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.²

VHS asserts portions of its information at issue are excepted from disclosure under section 552.110(c) of the Government Code. Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

² As our ruling is dispositive, we need not address the arguments against disclosure of this information.

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) of the Government Code lists certain types of information to which sections 552.110 and 552.1101 do not apply. *See id.* § 552.0222(b). VHS asserts some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find VHS has demonstrated portions of its information constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the center must withhold the information we have marked under section 552.110(c) of the Government Code.³ However, we find the remaining information at issue includes information subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Additionally, we find VHS 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 center may not withhold any portion 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). VHS argues its remaining information at issue constitutes trade secrets subject to section 552.110(b). As noted above, 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. Additionally, we find VHS has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the center may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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

- (a) Except as provided by Section 552.0222, information 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

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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, other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

See id. § 552.1101(a). VHS asserts disclosure of its remaining information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing and give advantage to a competitor. However, as noted above, some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101. Additionally, we find VHS has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the center may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.136 of the Government Code provides, “[n]otwithstanding 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.” *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. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the center must withhold the insurance policy numbers under section 552.136 of the Government Code.

In summary, the center must withhold the income tax returns under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The center must withhold the information we have marked under section 552.110(c) of the Government Code. The center must withhold the insurance policy numbers under section 552.136 of the Government Code. The center 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/rm

Ref: ID# 833644

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)