



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2020

Ms. Briana Godbey
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2020-19576

Dear Ms. Godbey:

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# 837435 (TRS Reference: Humana 20-1.4).

The Teacher Retirement System of Texas (the "system") received a request for twelve categories of information pertaining to a specified request for proposals. You state the system will release some of the requested information. You state the system will redact information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503. You also state release of the submitted information may implicate the proprietary interests of the following third parties: United Healthcare Insurance Company; Aetna Life Insurance Company; Scott and White Health Plan; and KS Plan Administrators LLC d/b/a KesleyCare Advantage. Accordingly, you state, and provide documentation showing, you notified these interested 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. *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 each of the notified third parties. We have considered the submitted arguments and reviewed the submitted

¹ Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you state some of the submitted information is not responsive to the instant request because it pertains to contracts that are not at issue in the present request or because it was created after the date of the present request. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

Next, we must address the requestor's assertion the system failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). We note this office does not count the date the request was received or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body's deadlines under the Act. Upon review, we find the system complied with the requirements of section 552.301 in requesting this decision from our office. *See id.* § 552.233 (temporary suspension of requirements for governmental body impacted by catastrophe). Thus, we will consider the system's arguments against disclosure of the submitted responsive information.

Next, we address the requestor's assertion the system failed to comply with section 552.221(d) of the Government Code. *See id.* § 552.221(d) (providing that if officer of public information cannot produce information for inspection or duplication within 10 business days after date information is requested, the officer shall certify that fact in writing to requestor and set date and hour within reasonable time when information will be available for inspection or duplication). We note that while section 552.302 provides failure to comply with section 552.301 results in the presumption that the requested information is subject to required public disclosure and must be released, the Act contains no comparable provision for a violation of section 552.221(d). *See id.* § 552.302. Accordingly, we will consider the system's arguments against disclosure of the responsive 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." *Id.* § 552.104(a). The "test under section

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the system may withhold the responsive information it has indicated under section 552.104(a) of the Government Code.³ The system must release the remaining responsive 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 837435

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

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