



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-29081

Dear Ms. Burnett:

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# 854383 (OGC# 198550).

The University of Texas System (the "system") received a request for a specified policy during a certain time period. 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 Blue Cross Blue Shield of Texas ("BCBSTX"). Accordingly, you state, and provide documentation showing, you notified BCBSTX of the request for information and of its 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 BCBSTX. We have considered the submitted arguments and reviewed the submitted information.

BCBSTX argues some of its information is subject to sections 552.110 and 552.1101 of the Government Code. Section 552.110(b) 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* Gov't Code § 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). 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 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). Section 552.1101 of the Government Code provides, in relevant part:

(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 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). Additionally, we note section 552.0222(b) lists certain types of information to which sections 552.110 and 552.1101(a) do not apply. *See id.* § 552.0222(b). BCBSTX argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find BCBSTX has demonstrated portions of the 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 have marked under section 552.110(c) of the Government Code.¹ However, we note some of the remaining information BCBSTX seeks to withhold is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 or section 552.1101(a). *See id.* Additionally, we find BCBS 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. Further, we find BCBS has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Also, we find BCBS 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. Therefore, the system 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/gw

Ref: ID# 854383

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.