



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Mr. Gary B. Stock  
Counsel for Lubbock Regional Mental Retardation Center  
Waddell Serafino Geary Rechner Jenevein  
1601 Elm Street, Suite 4100  
Dallas, Texas 75201

OR2020-31696

Dear Mr. Stock:

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# 859161.

The Lubbock Regional Mental Retardation Center operating as StarCare Specialty Health System ("StarCare"), which you represent, received a request for proposals submitted in response to a specified request for proposals. You state StarCare released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of East Texas Behavioral Health Network ("ETBHN"), Iris Telehealth, STeM Specialist Telemed, and SOC Telemed.<sup>1</sup> Accordingly, you state, and provide documentation showing, you 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. *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 ETBHN. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note StarCare did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties 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, StarCare may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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.

Gov't Code § 552.1101(a). ETBHN asserts disclosure of some of its information would reveal an individual approach to pricing and give advantage to a competitor. Upon review, we find ETBHN has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, StarCare must withhold the information we marked under section 552.1101 of the Government Code.<sup>2</sup> However, we find ETBHN has failed to provide the specific factual evidence necessary to withhold any of the remaining

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

information at issue under section 552.1101(a), and StarCare may not withhold it on that basis.

Section 552.110(b) of the Government Code states “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). ETBHN argues some of its information consists of trade secrets subject to section 552.110(b). However, we find ETBHN has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, StarCare may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, StarCare must withhold the information we marked under section 552.1101 of the Government Code. StarCare 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)