



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Ms. Gabriella M. Reed
Assistant County Attorney
El Paso County Hospital District
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2022-20563

Dear Ms. Reed:

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# 957716 (Ref. No. HM-22-238).

The El Paso County Hospital District (the "district") received a request for information pertaining to a district board meeting on a specified date. The district has released some information. The district claims the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Halsa Advisors, LLC ("Halsa"). Accordingly, the district states, and provides documentation showing, it notified Halsa 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 Halsa. We have reviewed the submitted information and considered the submitted arguments.

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." Gov't Code § 552.104(a). The "test under section 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). The district explains it competes with other privately operated hospitals for recruitment and retention of physicians in a medically underserved area. The district also explains the “recruitment and retention of physicians and examination of new business opportunities for the [d]istrict is an ongoing effort” and the district “typically enters into non-disclosure agreements with these entities/individuals.” The district also explains discussions with healthcare providers and entities for new lines of service are often made part of a strategic plan for the district and these projected plans are used in attracting physicians and expansion of service line opportunities. Thus, the district argues release of the information at issue would provide a competitive advantage to competitors of the district and compromise the district’s position in the market. Based upon these representations and our review, we find the district has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the district has demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the district may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,

Sarah E. Reese
Attorney
Open Records Division

SER/be

Ref: ID# 957716

c: Requestor

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