



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2022

Ms. Gabriella M. Reed
Assistant County Attorney
El Paso County Hospital District
4815 Alameda Avenue, 8th Floor Suite B
El Paso, Texas 79905

OR2022-27398

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# 967884 (EPCHD File No. HM-22-340).

The El Paso County Hospital District (the "district") received a request for information pertaining to a specified individual's salary and certain market analysis conducted regarding that individual's salary. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of Gallagher Benefit Services, Inc. ("GBS"). Accordingly, the district states, and provides documentation showing, it notified GBS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ *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 GBS. We have reviewed the submitted information and the submitted arguments.

Section 552.110(c) of the Government Code excepts from disclosure "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

¹ We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, as the interests of a third party can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

information was obtained[.]” Gov’t Code § 552.110(c). GBS argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find GBS has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by GBS, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c).²

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we have indicated under section 552.110(c) of the Government Code. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

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

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Enc. Submitted documents

c: Requestor
(w/o enclosures)