



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2022

Mr. Jonathan Miles
Open Records Department Director
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2022-30572

Dear Mr. Miles:

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# 976119 (HHSC ORR No. A07062022.0450026).

The Texas Health and Human Services Commission (the "commission") received a request for the winning response pertaining to a specified solicitation. Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of the submitted information may implicate the proprietary interests of Sherry Matthews, Inc. ("Sherry"). Accordingly, the commission states, and provides documentation showing, it notified Sherry of the request for information and of the 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 reviewed the submitted information.

Initially, the commission states it sought clarification of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the commission has not received a response to its request for clarification. We note a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, the commission has submitted information it believes is responsive to the request for information. Thus, we

assume the commission has made a good faith effort to relate this request to information the commission holds. However, the commission has no obligation at this time to release any additional responsive information for which the commission has not received clarification. If the requestor responds to the request for clarification, the commission must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code §§ 552.301, .302; *see also* *City of Dallas*, 304 S.W.3d at 387.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Sherry explaining why the submitted information should not be released. Therefore, we have no basis to conclude Sherry 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, the commission may not withhold the submitted information on the basis of any proprietary interest Sherry may have in the information. As no exceptions to disclosure have been raised, the commission must release the submitted 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/pt

Ref: ID# 976119

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)