



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2022

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

OR2022-31249

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# 973657 (HHSC ORR Nos. A06292022.0450010, A07062022.0450025, and A07082022.0450002).

The Texas Health and Human Services Commission (the "commission") received three requests from different requestors for information pertaining to a specified request for proposals.<sup>1</sup> You state you will release some 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 Conduent State Healthcare, LLC ("Conduent"); Gainwell Technologies, LLC ("Gainwell"); and Magellan Medicaid Administration, Inc. ("Magellan"). Accordingly, you state, and provide documentation showing, you notified these 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 Gainwell and Magellan. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The commission states, and provides documentation showing, it sought and received clarification of the information requested for the third request. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note 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 Conduent. Thus, we have no basis to conclude Conduent 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 any portion of the submitted information on the basis of any proprietary interest Conduent may have in the information.

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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Gainwell and Magellan argues some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Gainwell and Magellan have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Gainwell and Magellan is made available to the public, including but not limited to on their company website or social media accounts, it may not be withheld under section 552.110(c).<sup>2</sup>

We note some of the remaining information 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 commission must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Gainwell and Magellan is made available to the public, including but not limited to on their company website or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The commission must release the remaining

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

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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/eb

Ref: ID# 973657

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)