



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2022

Mr. Omar Villa  
Assistant County Attorney  
University Medical Center of El Paso  
4815 Alameda Avenue, 8th Floor, Suite B  
El Paso, Texas 79905

OR2022-34284

Dear Mr. Villa:

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# 978908 (File No. HM-22-468).

The El Paso County Hospital District d/b/a University Medical Center of El Paso (the "district") received a request for analyses or studies pertaining to a particular project. The district has released some information. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered your claimed exception and reviewed the representative sample of information.<sup>1</sup>

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

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/pt

Ref: ID# 978908

c: Requestor