



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2022

Mr. Chris Cowan
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2022-35965

Dear Mr. Cowan:

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# 981627 (TRS Ref. No. 21-1.2).

The Teacher Retirement System of Texas (the "system") received a request for specified contracts and amendments.¹ The system claims some of the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. Additionally, the system states release of the submitted information may implicate the proprietary interests of CaremarkPCS Health, L.L.C. ("Caremark") and SilverScript Insurance Company ("SilverScript"). Accordingly, the system states, and provides documentation showing, it notified Caremark and SilverScript of the request and their rights to submit arguments to this office. *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 an attorney on behalf of Caremark and SilverScript. We have considered the submitted arguments and have reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous requests for a ruling, in response to which this office issued Open Records Letter Nos. 2017-28511

¹ The system states, and provides documentation showing, it sought and received clarification of the information requested. *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).

(2017) and 2021-13364 (2021). In response to Open Records Letter Nos. 2017-28511 and 2021-13364, Caremark and SilverScript filed lawsuits against our office. See *CaremarkPCS Health, L.L.C. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-17-006839 (250th Dist. Ct., Travis County, Tex.) and *CaremarkPCS Health, L.L.C. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-21-002566 (455th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in these lawsuits, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.² However, we will consider the public availability of the remaining information not subject to the pending litigation.

We note the remaining information consists of information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The contracts to which the amendments at issue pertain are between the system, which is a state agency, and a private vendor for the purchases of services, and are not expired or completed. See *id.* § 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002), 2151.002(3) ("state agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). The system seeks to withhold the information at issue under section 552.104 of the Government Code. Caremark and SilverScript seek to withhold portions of the information at issue under section 552.110 of the Government Code. However, we note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the system may not withhold the remaining information at issue under section 552.104, section 552.110, or section 552.1101 of the Government Code.

In summary, with regard to the information at issue in the lawsuits, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. The system must release the remaining information at issue pursuant to section 2261.253 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.

² As we are able to make this determination, we need not address the arguments against disclosure of this information.

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

GAA/pt

Ref: ID# 981627

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)