



ATTORNEY GENERAL OF TEXAS

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April 6, 2010

Ms. Andrea Slater Gulley
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OR2010-04844

Dear Ms. Gulley:

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# 375096.

The Amarillo Independent School District (the "district"), which you represent, received a request for the contracts, winning proposals, and all other contractor bid submissions for specified requests for proposals. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received correspondence from representatives of Alliance Regional Health Network; BlueCross BlueShield of Texas; Caremark, LLC; Catalyst Health Solutions; Express Scripts, Inc.; FirstCare Health Plans; Fort Dearborn National Life Insurance Company; HealthSCOPE Benefits; MaxorPlus, Ltd.; United Healthcare; and WellDyne Rx.¹ We have considered the submitted arguments and have reviewed the submitted information.

¹The remaining third parties are as follows: ClearScript; Commerce Group America; Group Health Benefit Consultants; The Hartford; IMS/Mutual Assurance Administrators; ING; Innovanté; JDW Insurance/UNUM; Liberty Mutual; Minnesota Life; RESTAT, LLC; Sun Life Financial; The Standard; Texas Municipal League; US Script, Inc.; and Walgreens.

Initially, we note that you have only submitted the requested bid proposals. Thus, to the extent any information responsive to the requestor's request for the specified contracts existed and was maintained by the district on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, the district and several third parties inform us that the submitted prescription bid proposals were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-12294 (2009). In Open Records Letter No. 2009-12294, we concluded that the district may withhold the submitted "Pharmaceutical Benefits Management" bid proposals under section 552.104 of the Government Code. With regard to the requested information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district may continue to rely on Open Records Letter No. 2009-12294 as a previous determination and withhold the identical information in accordance with this ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

The district and several of the third parties argue that the remaining information is excepted under section 552.104 of the Government Code. We note that section 552.104 only protects the interests of a governmental body and is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Accordingly, we will only consider the district's argument under this exception. Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* ORD 592. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may

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

apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You inform us that the remaining proposals relate to various insurance contracts where the district has awarded the bid. You state that the district requests bids for all of its insurance services "once every three years." You contend that release of the remaining proposals would give a prospective bidder an unfair competitive advantage by allowing it to undercut future bids, preventing the district from receiving the lowest bid possible. Having considered your arguments, we find that you have demonstrated that section 552.104 is applicable to the remaining information. Therefore, we conclude that the district may withhold the remaining information under section 552.104 of the Government Code.³

In summary, the district may continue to rely on Open Records Letter No. 2009-12294 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. The district may withhold the remaining submitted information under section 552.104 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

³As our ruling is dispositive, we need not address the remaining submitted arguments against disclosure.

Ref: ID# 375096

Enc. Submitted documents

c: Requestor
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