



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2010

Mr. Wm. Clarke Howard
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2010-11154

Dear Mr. Howard:

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# 387912.

The Teacher Retirement System of Texas (the "system") received a request for proposals submitted in response to all requests for proposal for pharmacy benefit manager services issued by the system between September 1, 1998, and May 7, 2010, and the related contracts. You state some responsive information has been destroyed pursuant to the system's records retention policy.¹ You also state you will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.104, and 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you notified AdvancePCS; Aetna; CVS Caremark, Inc. ("Caremark"); Express Scripts ("Express"); Humana Pharmacy Solutions ("Humana"); LDI; Medco Health Solutions ("Medco"); Prime Therapeutics, LLC ("Prime"); ProCare; RX Prescription Solutions ("RX"); and Texas Municipal League ("TML") of the request and of their right to submit arguments to this

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismiss'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from Caremark, Express, and Medco. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us portions of the requested information are the subject of litigation pending against the Office of the Attorney General. *See Caremark, Inc. v. Abbott*, No. GN-06-003470 (261st Dist. Ct., Travis County, Tex.); *Teacher Ret. Sys. of Tex. v. Abbott*, No. GN-06-003817 (261st Dist. Ct., Travis County, Tex.); *Caremark, Inc. v. Abbott*, No. D-1-GN-07-004459 (250th Dist. Ct., Travis County, Tex.); *Teacher Ret. Sys. of Tex. v. Abbott*, No. D-1-GN-07-004356 (98th Dist. Ct., Travis County, Tex.); *CaremarkPCS Health, LP v. Abbott*, No. D-1-GN-08-003462 (98th Dist. Ct., Travis County, Tex.); and *Caremark, LLC v. Abbott*, No. D-1-GN-08-004330 (353rd Dist. Ct., Travis County, Tex.). Accordingly, we will allow the trial courts to resolve the issue of whether the information at issue in the pending litigation must be released to the public.

Next, you inform us some of the remaining information is the subject of previous requests, as a result of which this office issued Open Records Letter Nos. 2006-10313 (2006) and 2008-12580 (2008). In Open Records Letter No. 2006-10313, we ruled the system may continue to rely on Open Records Letter No. 2002-2450 (2002) as a previous determination for the information at issue that is not subject to the agreed order in cause number GN 201655 (261st Dist. Ct., Travis County, Tex.) and that the system must withhold the information we marked in the Caremark and Medco contract amendments under section 552.110 of the Government Code. In Open Records Letter No. 2008-12580, we ruled, in part, the system must withhold the following: (1) the information we marked under section 552.101 in conjunction with common-law privacy; (2) the portions of the proposals belonging to AdvancePCS, EHS-Eckerd, MedImpact, NMHC Rx, Rx America, and UnitedHealthCare that we marked under section 552.110; and (3) the information we marked under section 552.136. As we have no indication that there has been any change in the law, facts, or circumstances on which these previous rulings were based, we conclude the system must rely on Open Records Letter Nos. 2006-10313 and 2008-12580 as previous determinations and continue to treat the remaining previously ruled upon information in accordance with those rulings.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

²Accordingly, we do not address arguments submitted by the system, Caremark, Express, or Medco for this information.

In Open Records Letter No. 2008-15991 (2008), we ruled the system may withhold the information we marked under section 552.111 of the Government Code and must withhold the information we marked pertaining to Catalyst Rx, Express, HealthTrans, Medco, Prime, and Walgreens Health Initiatives under section 552.110. In this prior ruling we also ruled the system must release information pertaining to SXC Health Solutions, Inc.'s ("SXC") because SXC did not submit any arguments explaining why the company's information should not be released. We note that in subsequent litigation involving Open Records Letter No. 2008-15991, *SXC Health Solutions, Inc. v. Abbott*, No. D-1-GN-08-004327 (261st Dist. Ct., Travis County, Tex.), the court issued an agreed order pertaining to SXC's information. Thus, with regard to the information pertaining to SXC, the system must continue to rely on the Agreed Final Judgment to release or withhold portions of SXC's proposal submitted in response to RFP #323-PBM-07ML. Additionally, the system also informs us that a portion of the information at issue in Open Records Letter No. 2008-15991 was the basis of another lawsuit, *Medco Health Solutions, Inc. v. Abbott*, No. D-1-GN-08-004329 (354th Dist. Ct., Travis County, Tex.). The system notes this litigation concluded with the filing of a notice of nonsuit by Medco. Accordingly, Open Records Letter No. 2008-15991 was unaffected by this litigation, and the information relating to Medco that was at issue in this closed litigation is subject to release in accordance with Open Records Letter No. 2008-15991. Thus, except for the information pertaining to SXC, as we have no indication that there has been any change in the law, facts, or circumstances on which this previous ruling was based, the system must continue to rely on Open Records Letter No. 2008-15991 with respect to the remaining information at issue in this prior ruling.

Next, the system states we previously ruled on some of the remaining information in Open Records Letter No. 2010-08904 (2010). In this prior ruling we ruled the system may withhold information it marked under section 552.104, and the information we marked under section 552.111. We also ruled the system must withhold: (1) the information we marked pursuant to section 552.101 in conjunction with common-law privacy; (2) the insurance policy numbers we marked under section 552.136; and (3) the information we marked in proposals belonging to Caremark, Express, Prime, and Humana under section 552.110 of the Government Code. Subsequent to the issuance of this ruling, the system submitted additional responsive information pertaining to Prime. In Open Records Letter No. 2010-11132 (2010), our office ruled the system must withhold portions of this additional information pertaining to Prime under section 552.110. We note that since the issuance of Open Records Letter No. 2010-08904, Caremark and Medco have filed lawsuits against our office involving this prior ruling. See *Caremark PCS Health, LLC v. Abbott*, No. D-1-GN-10-002136 (419th Dist. Ct., Travis County, Tex.); *Medco Health Solutions, Inc. v. Abbott*, No. D-1-GN-10-002144 (345th Dist. Ct., Travis County, Tex.). Accordingly, we will allow the trial courts to resolve the issue of whether Caremark's and Medco's information at issue in the pending litigation must be released to the public, and, because there has not been any change in the law, facts, or circumstances on which these previous rulings were

based, the system must continue to rely on Open Records Letter Nos. 2010-08904 and 2010-11132 with respect to the remaining information at issue in these prior rulings.³

The system claims portions of Caremark's proposal submitted in response to RFP #10179BPBM-DP are excepted from disclosure by the litigation section, Government Code section 552.103. Additionally, Caremark asserts Amendments 8, 9, and 10 to its 2004 contract with the system are excepted from disclosure under section 552.103. We do not address these claims.⁴ Moreover, although the system also asserts Amendments 8, 9, and 10 to its 2004 contract with Caremark are excepted from disclosure under section 552.103 because the system is in litigation with our office concerning this information, we note these documents are subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, this information may not be withheld under section 552.103 of the Government Code.

Next, the system states the submitted information contains insurance policy numbers that are excepted under section 552.136 of the Government Code. Section 552.136(b) provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Accordingly, the system must withhold the insurance policy number we have marked under section 552.136 of the Government Code.⁵

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

³Accordingly, we do not address arguments submitted by the system, Caremark, Express, or Medco for this information.

⁴Because section 552.103 protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties, we do not address Caremark's argument under section 552.103. *See* Open Records Decision Nos. 542 (statutory predecessor to section 552.103 does not implicate the rights of a third party), 522 (1989) (discretionary exceptions in general). Furthermore, although the system states portions of the submitted proposals are related to pending litigation initiated by Caremark and Medco against our office, we note the system is not a party to these lawsuits. The litigation exception only applies when the governmental body is a party to the pending or reasonably anticipated litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

why requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, AdvancePCS, Aetna, Humana, LDI, ProCare, RX, and TML have not submitted to this office any reasons explaining why their requested information should not be released. We thus have no basis for concluding that any portion of the submitted information pertaining to these companies constitutes proprietary information, and the system may not withhold any portion of the information at issue on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

We understand Caremark to assert that portions of its proposal submitted in response to RFP #323-PBM-01-DP are excepted from disclosure under section 552.104 of the Government Code. Section 552.104 only protects the interests of a governmental body and does not protect the interests of third parties; therefore, we will not consider Caremark's claim under section 552.104. *See* Open Records Decision No. 592 at 9 (1991). As the system does not seek to withhold this information under section 552.104, we find this section is not applicable to Caremark's proposal submitted in response to RFP #323-PBM-01-DP.

Next, Caremark raises section 552.110 of the Government Code for portions of its proposal and AdvancePCS's proposal submitted in response to RFP #323-PBM-01-DP. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information, the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision." Gov't Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.⁶ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a private person's claim for exception as valid under section 552.110 if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) applies unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983). We note that pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982).

Section 552.110(b) excepts from disclosure "[c]ommercial 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." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

After consideration of arguments submitted by Caremark and review of its proposal and AdvancePCS's proposal submitted in response to RFP #323-PBM-01-DP, we conclude Caremark has failed to demonstrate that this information is a trade secret, and none of it may be withheld under section 552.110(a). Thus, the system may not withhold any portion of the information in Caremark's or AdvancePCS's proposals submitted in response to RFP #323-PBM-01-DP under section 552.110(a) of the Government Code.

Caremark also claims release of its proposal and Advance PCS's proposal submitted in response to RFP #323-PBM-01-DP would cause it substantial competitive harm. However, it has not explained how release of any specific portions of these proposals would cause it

⁶The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

harm. Thus, we find Caremark has failed to provide specific factual evidence demonstrating that release of any portion of these proposals submitted in response to RFP #323-PBM-01-DP would result in substantial competitive harm to the company. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the system may not withhold any portion of Caremark's or AdvancePCS's proposals submitted in response to RFP #323-PBM-01-DP pursuant to section 552.110(b) of the Government Code.

Caremark also argues portions of its proposal and AdvancePCS's proposal submitted in response to RFP #323-PBM-01-DP fit the definition of a trade secret found in section 1839(3) of title 18 of the United States Code, and indicates this information is therefore confidential under sections 1831 and 1832 of title 18 of the United States Code. *See* 18 U.S.C. §§ 1831, 1832, 1839(3). Section 1839(3) provides in relevant part:

(3) the term "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes ... if-

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public[.]

Id. § 1839(3). Section 1831 provides criminal penalties for the unauthorized disclosure of trade secrets to foreign governments, instrumentalities, or agents. *Id.* § 1831. Section 1832 provides criminal penalties for the unauthorized appropriation of trade secrets related to products produced for or placed in interstate or foreign commerce. *Id.* § 1832. We find Caremark has not demonstrated the information at issue is a trade secret under section 1839(3). Accordingly, we need not determine whether section 1831 or section 1832 applies.

Lastly, we note portions of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish

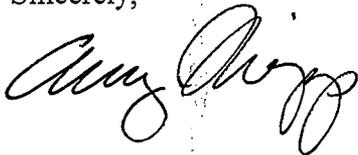
copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted 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, we will not address whether the information at issue in the lawsuits pending against this office is excepted from required public disclosure under the Act, but will instead allow the trial courts to determine whether this information must be released to the public. With respect to the remaining information, the system must continue to rely on Open Records Letter Nos. 2006-10313, 2008-12580, 2008-15991, 2010-08904, and 2010-11132 to withhold or release the information at issue in those prior rulings. The system must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released 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 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/eeg

Ref: ID# 387912

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Dana Merry
AdvancePCS, c/o Carmark
109 Village Glen
Georgetown, Texas 78633
(w/o enclosures)

Mr. Robert H. Griffith
Foley & Larnder LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60610
(w/o enclosures)

Mr. Scott Wilson
Texas Municipal League
1821 Rutherford Lane, Suite 300
Austin, Texas 78754
(w/o enclosures)

Mr. Mark Chulick
Aetna
2777 Stemmons Freeway, Suite 300
Dallas, Texas 75207
(w/o enclosures)

Ms. Melissa J Copeland
Schmid & Copeland LLC
P.O. Box 11547
Columbia, South Carolina 29211
(w/o enclosures)

Mr. Thomas Silliman
Humana Pharmacy Solutions
8431 Fredericksburg Road, Suite 500
San Antonio, Texas 78229
(w/o enclosures)

Mr. Don Houchin
LDI
2114 Chimney Rock Road
Houston, Texas 77056
(w/o enclosures)

Mr. Jack Skaggs
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)

Mr. Richard L. Josephson
Baker Botts LLP
One Shell Plaza
910 Louisiana
Houston, Texas 77002
(w/o enclosures)

Mr. Wayne Beisel
Prime Therapeutics LLC
2901 Kinwest Parkway, Building B
Irving, Texas 75063
(w/o enclosures)

Mr. Steve Drucker
ProCare
3090 Premiere Parkway, Suite 100
Duluth, Georgia 30097
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

SC DEC 07 2015

At 8:54 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-10-002751

CAREMARKPCS HEALTH, L.L.C., and
CAREMARK, L.L.C.,
Plaintiffs,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 53RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Caremark L.L.C. (Caremark), sought to withhold certain information which is in the possession of the Teacher Retirement System of Texas (TRS). All matters in controversy between Plaintiff, Caremark, and Defendant, Ken Paxton¹, Attorney General of Texas (Attorney General), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Antonio A. Tijerna on November 16, 2015, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that TRS will be told to withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the

¹ Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.



withholding of this information. A copy of the certified mail receipt is attached to this motion.

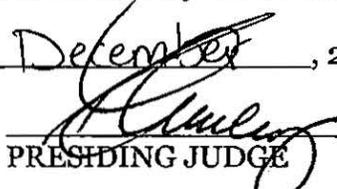
The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

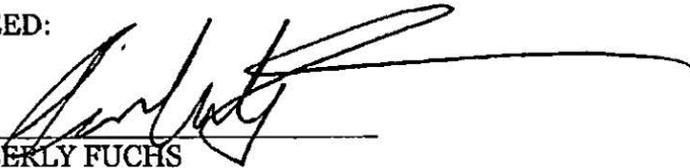
1. Caremark and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the Attorney General agrees that certain portions of the responsive information contained in Amendments 8 and 10 to the Prescription Benefit Services Agreement can be redacted in accordance with the markings agreed to by the parties. The Attorney General will provide a copy of the agreed markings to TRS.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Caremark and the Attorney General and is a final judgment.

SIGNED the 7 day of December, 2015.



PRESIDING JUDGE

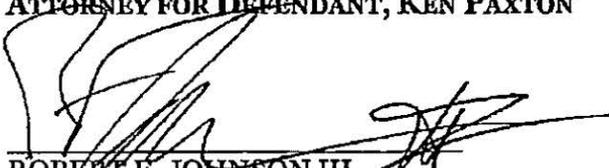
AGREED:



KIMBERLY FUCHS

Texas Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEPENDANT, KEN PAXTON



ROBERT F. JOHNSON III

State Bar No. 10786400
Gardere Wynne Sewell, LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701-2978
Telephone: (512) 542-7018
Facsimile: (512) 542-7327
RJOHNSON@gardere.com

ATTORNEY FOR PLAINTIFF CAREMARK

A

CAUSE NO. D-1-GN-10-002751

CAREMARKPCS HEALTH, L.L.C., and	§	IN THE DISTRICT COURT OF
CAREMARK, L.L.C.,	§	
Plaintiffs,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	53 RD JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between CaremarkPCS Health L.L.C and Caremark L.L.C. (Caremark) and Ken Paxton¹, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

In 2010, a request was made under the Public Information Act (PIA) which included a bid for services from Caremark to the Teacher Retirement System (TRS).

In Letter Ruling OR2010-11154, the Open Records Division of the Attorney General (ORD) required TRS to release some information Caremark claims is proprietary.

After this lawsuit was filed, Caremark submitted information and briefing to the Attorney General establishing that some of the information at issue is excepted from disclosure under Texas Government Code section 552.104 in conjunction with *Boeing Company v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The Attorney General has reviewed Caremark’s request and agrees to the settlement.

¹ Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Caremark and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the Attorney General agrees that certain portions of the responsive information contained in Amendments 8 and 10 to the Prescription Benefit Services Agreement can be redacted in accordance with the markings agreed to by the parties, which markings are reflected on the copies of Amendments 8 and 10 that Caremark transmitted to the Attorney General via email and overnight delivery on November 2, 2015. The Attorney General will provide a copy of the agreed markings to TRS, with a letter instructing TRS that Letter Ruling OR2010-11154 should not be relied upon as a prior determination.

2. Caremark and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest Caremark's right to have TRS withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

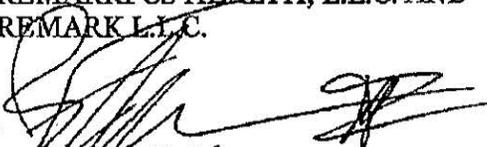
6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. Caremark warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Caremark has against the Attorney General arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Caremark arising out of the matters described in this Agreement.

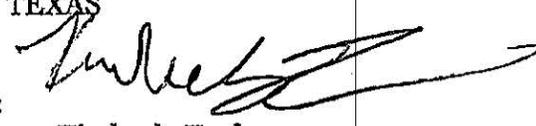
9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

CAREMARKPCS HEALTH, L.L.C. AND
CAREMARK L.L.C.

By: 
name: Robert F. Johnson
firm: Gardere Wynne Sewell, LLP

Date: 11/12/2015

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 11/16/15