



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2011

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2011-03061

Dear Mr. Smith:

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# 410470.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to "plans to transition . . . administration of the Texas Vendor Drug Program into programs of managed care providers currently active in Texas."¹ You state some of the requested information either has been or will be released. You have submitted other responsive information the commission seeks to withhold under sections 552.104 and 552.111 of the Government Code.² You also believe some of the submitted information may implicate the interests of the Superior HealthPlan Network ("Superior"). You inform us Superior was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.³ We received correspondence from an attorney for Superior. We have considered all the submitted

¹You inform us, and this request for information states, that the request "supersedes" a previous request by this same requestor.

²You indicate some of the submitted information is not responsive to the instant request. This decision does not address the public availability of that information.

³See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

arguments and reviewed the submitted information, some of which is a representative sample.⁴ We also have considered the comments we received from the requestor.⁵

Section 552.104 of the Government Code excepts from 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* Open Records Decision No. 592 (1991). 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). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been executed and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state the submitted information pertains to a competitive bidding procurement involving Medicaid and Children's Health Insurance Program ("CHIP") managed care services the commission intends to formally issue in the near future. You inform us the commission has already issued a draft of the request for proposals ("RFP") for public comment. You explain the information at issue consists of historical and projected data concerning Medicaid and CHIP, including costs and savings anticipated with the commission's new initiative. You contend release of this information at this time would provide responding vendors with valuable insight into the commission's administration of the benefit programs and the rationale for the transfer of pharmacy services to the control of managed care organizations, so as to enable respondents who obtain the information to tailor their proposals to the detriment of other vendors. You assert that public access to this information would directly impact the commission's ability to receive truly competitive bids once the formal RFP is issued. Based on your representations, we conclude the commission may withhold the submitted information at this time under section 552.104 of the Government Code.⁶ We note the commission may no longer withhold this information on this basis once a contract has been executed and is in effect.

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.

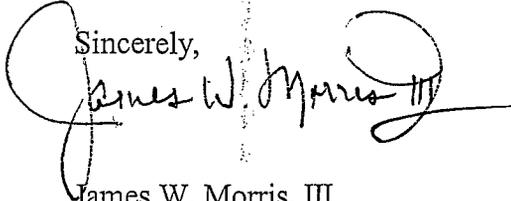
⁴This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁵*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

⁶As we are able to make this determination, we need not address the other exception you claim or the arguments we received from Superior.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 410470

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Brooke A. Spence
Greenberg Traurig LLP
1000 Louisiana Street, Suite 1700
Houston, Texas 77002
(w/o enclosures)