



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2012

Ms. Ashley S. Wilson
General Counsel
Dallas County Schools
612 North Zang Boulevard
Dallas, Texas 75208

OR2012-09780

Dear Ms. Wilson:

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# 457007.

Dallas County Schools ("DCS") received a request for records related to contracts between DCS and medical providers "as part of a Chapter 504 workers' compensation program."¹ You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has

¹DCS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us DCS provides, through its Chapter 504 Workers' Compensation Medical Care Program ("504 Program"), coverage to governmental bodies for medical services for the treatment of work-related injuries in accordance with chapter 504 of the Labor Code and chapter 791 of the Government Code. *See generally* Lab. Code §§ 504.002, 504.011 (regarding application of general workers' compensation laws to political subdivisions); Gov't Code §§ 791.001-791.033. *See also Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320 (Tex. 2006) (addressing self-insurance pools authorized by chapter 791 and other statutes). Based on your representations, we find you have demonstrated DCS has specific marketplace interests in the workers' compensation insurance market and may be considered a "competitor" for purposes of section 552.104. *See* Open Records Decision No. 593 (1991).

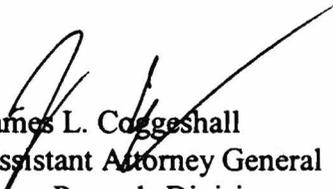
Exhibit 2 consists of an agreement between DCS and a private corporation that manages DCS's 504 Program (the "Program Manager"). You assert "[t]he concept of the 504 Program Manager is proprietary to DCS – no other healthcare manager in the marketplace employs this concept for managed care." You state this agreement "lays out a road map for a competitor to copy and diminish DCS's advantage in the marketplace" and argue if it is released, DCS competitors "will be able to use DCS's unique 504 Program methods and its pricing formula for such services as their own." You also assert its release will allow DCS competitors "to use this information to structure their own Chapter 504 Program to directly compete with DCS." Based on the submitted representations and arguments, we find DCS has shown release of the Exhibit 2 would cause specific harm to DCS's interests. Therefore, we conclude DCS may withhold this information under section 552.104 of the Government Code.

Exhibit 3 consists of agreements between DCS and various medical providers. You assert releasing these agreements would jeopardize DCS's bargaining position in contract negotiations with future providers because "DCS negotiates with new providers on an ongoing basis." You also argue if the information was released, "DCS may not be able to negotiate the most advantageous terms and conditions on such things as covered services, fees, and other costs with future providers." In addition, you declare, "[i]f DCS were to publicly disclose not only the contract professional services pricing, but also the unique methodology of providing the services, its ability to effectively leverage and negotiate with the marketplace would be damaged, making it more difficult for DCS to reduce administrative expenses and leverage better pricing for goods and services for itself and other governmental entities." Based on your representations, we find you have demonstrated public release of Exhibit 3 would cause specific harm to DCS's interests in particular competitive situations. Therefore, DCS may withhold Exhibit 3 under section 552.104 of the Government Code. Thus, DCS may withhold the submitted information in its entirety on that ground.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 457007

Enc. Submitted documents

c: Requestor
(w/o enclosures)