



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2012

Mr. Jonathan T. Koury  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2012-11918

Dear Mr. Koury:

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# 460559.

The City of Bryan (the "city") received a request for "the current operative agreement" between the city and CaremarkPCS Health, Inc. ("Caremark") for pharmacy benefit management services. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified Caremark of the request and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 correspondence from an attorney representing Caremark. We have reviewed the submitted arguments and information.

We note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-15186 (2011). In this ruling, we determined the city must withhold portions of Caremark's information at issue under section 552.110(a) of the Government Code, and must release the remaining information at issue in accordance with copyright law. In response to our ruling, Caremark has filed a lawsuit against our office. *See CaremarkPCS Health, L.L.C. v. Abbott*, No. D-1-GN-11-003314 (250th Dist. Ct., Travis County, Tex.). Accordingly, we will allow

the trial court to resolve the issue of whether Caremark's information at issue in the pending litigation must be released to the public. With respect to Caremark's remaining information at issue in Open Records Letter No. 2011-15186, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, for Caremark's information that is at issue in Open Records Letter No. 2011-15186 and is not at issue in the pending lawsuit, we conclude the city must rely on Open Records Letter No. 2011-15186 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>1</sup> 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).

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/tch

Ref: ID# 460559

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>As our ruling is dispositive, we need not address Caremark's arguments against disclosure.

Mr. Robert H. Griffith  
Counsel for CaremarkPCS Health, L.L.C.  
Foley & Lardner L.L.P.  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60654-5313  
(w/o enclosures)