



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2013

Ms. Anne Kimbol
General Counsel
Texas Health Services Authority
221 East 9th Street, Suite 201
Austin, Texas 78701

OR2013-17860

Dear Ms. Kimbol:

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# 502362.

The Texas Health Services Authority (the "authority") received two requests for the responses to request for proposals numbers A1548-13-00003 and A1548-13-00004 from the same requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You further state the proprietary interests of certain third parties might be implicated by the requests. Accordingly, you notified the affected third parties of the requests and of their right to submit arguments to this office explaining why their information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by Cognosante, HITRUST, and KPMG. We have considered the submitted arguments and reviewed the submitted information.

¹The affected third parties are the following: Cognosante, LLC ("Cognosante"); Divurgent; Drummond Group; EHNAC; Hielix, Inc.; HITRUST Alliance, Inc. and HITRUST Services Corp. (collectively "HITRUST"); KPMG LLP ("KPMG"); Patient Privacy Rights; and SummaTG.

Initially, we note Cognosante seeks to withhold information the authority has not submitted for our review. This ruling does not address information beyond what the authority has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the authority has submitted as responsive to the request for information. *See id.*

The authority and Cognosante each raise section 552.104 of the Government Code. We note this section protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 (1991). Accordingly, we will address the authority's argument under section 552.104, but, because section 552.104 does not protect the interests of third parties, we will not address Cognosante's argument under this exception.

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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* ORD 592 at 8 (statutory predecessor to section 552.104 designed to protect interests of governmental body). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the submitted information consists of bids submitted in response to two requests for proposals issued by the authority. You state the authority had not yet completed the competitive bidding process to which the submitted proposals relate at the time the requests for information were received. Based on your representations and our review, we conclude the authority has demonstrated the applicability of section 552.104 to the submitted information. Accordingly, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).²

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.

²As our ruling is dispositive, we need not address your remaining argument, nor the arguments submitted by Cognosante, HITRUST, and KPMG.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 502362

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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