



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 14, 2016

Ms. Sylvia Porter  
Assistant County Attorney  
County of El Paso  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2016-01146

Dear Ms. Porter:

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# 594236 (County File No. OP-15-516).

El Paso County (the "county") received a request for four categories of information relating to a specified request for proposals ("RFP"). The county states it will release Exhibit C to the requestor. The county claims Exhibit D is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, the county states the release of Exhibit D may implicate the proprietary interests of Corizon Health, Inc. ("Corizon"); Correct Care Solutions, LLC ("CCS"); Emergence Health Network ("EHN"); and the University of Texas Medical Branch at Galveston ("UTMB"). Accordingly, the county states, and provides documentation showing, it notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 (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 comments from CCS, Corizon, and UTMB. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received

comments from EHN explaining why the submitted information should not be released. Therefore, we have no basis to conclude EHN has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest EHN may have in the information.

Next, you state portions of the requested information were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-22392 (2015). In that ruling, we determined, in pertinent part, the county may withhold the marked information under section 552.104 of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the county may rely on Open Records Letter No. 2015-22392 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 information is or is not excepted from disclosure).

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The county represents the information it has indicated pertains to a competitive bidding situation. In addition, the county states release of the information at issue “would harm the [c]ounty’s purchasing interests and weaken its bargaining position as it deliberates options and negotiates the best price and package on . . . inmate medical services, whether through a successful interlocal arrangement or through its [RFP] process.” After review of the information at issue and consideration of the arguments, we find the county has established the release of the remaining information would give advantage to a competitor or bidder. Thus, the county may withhold the remaining information under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, the county may rely on Open Records Letter No. 2015-22392 as a previous determination and withhold or release the identical information in accordance with that

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

ruling. The county may withhold the remaining information under section 552.104(a) of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 594236

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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