



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701

OR2016-16287

Dear Ms. Tynan:

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# 619091 (OGC# 169401).

The University of Texas System (the "system") received a request for responses to questions and pricing from respondents to an RFP for the UT Flex Health Care Flexible Spending Account and Dependent Care Flexible Spending Account for Employees. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of specified third parties. Accordingly, you notified ConnectYourCare, LLC; HealthSmart Holdings, Inc.; Maestro Health ("Maestro"); and TCG Administrators of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 comments from Maestro. We have considered the submitted arguments and reviewed the submitted information.

The system raises section 552.104(a) of the Government Code for the submitted information, which excepts 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, 841 (Tex. 2015).

You represent the submitted information pertains to a competitive bidding situation. Further, you state the system and the winning bidder have not yet finalized an agreement. Moreover, you inform us release of the submitted information would “disadvantage the [s]ystem in obtaining a fair contract.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a).¹

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, 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/dls

Ref: ID# 619091

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address Maestro’s argument against disclosure.