



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Mr. Andrew Devine
Senior Associate Attorney
Dallas County Hospital District d/b/a Parkland Health & Hospital System
5200 Harry Hines Boulevard
Dallas, Texas 75235

OR2016-21189

Dear Mr. Devine:

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# 626994 (DCHD# 16-38).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received a request for the bid tabulation related to a specified event. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Alpha Identification, Inc. ("Alpha"); ColorID, LLC; and The IRIS Companies. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(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 Alpha. 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 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from either remaining third party explaining why any of the submitted information should not be released. Therefore, we have

no basis to conclude either of these third parties have any protected proprietary interest in the 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, Parkland may not withhold any of the submitted information on the basis of any proprietary interests either remaining third party may have in the information.

Alpha seeks to withhold portions of the submitted information under section 552.104(a) of the Government Code. This section excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Although Alpha raises section 552.104 for portions of the submitted information, we find Alpha has failed to demonstrate the release of the information at issue would give advantage to a competitor or bidder. Thus, Parkland may not withhold the information at issue under section 552.104(a). As no further exceptions to disclosure are raised, Parkland must release the submitted information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 626994

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)