



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2016

Mr. Jonathan K. Frels
Counsel for the M.D. Anderson Physicians Network
Bracewell LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002

OR2016-22964

Dear Mr. Frels:

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# 630214.

The M.D. Anderson Physicians Network (the "network"), which you represent, received a request for eleven categories of information.¹ You claim the network is not a governmental body, and thus, is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, 552.110, 552.117, 552.137, and 552.147 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of twenty-seven third parties. Accordingly, you state, and provide documentation showing, you notified these specified twenty-seven 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*

¹We note the network sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request). Further, you inform us the network sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See id.* § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the network received the required deposit on July 26, 2016. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit)

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 Community Health Network; Covenant Cancer Center; DCH Health System; Dr. Steven Frank; Piedmont Healthcare, Inc.; Sacred Heart Health System, Inc.; Saint Francis Healthcare System; St. John Health System; St. Vincent's Medical Center; Simona Shaitelman; and the University of Missouri Ellis Fischel Cancer Center. We have also received and considered comments from an attorney representing the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and the submitted arguments.

The Act defines "governmental body," in pertinent part, as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]

Id. § 552.003(1)(A)(xii). "Public funds" means "funds of the state or of a governmental subdivision of the state." *Id.* § 552.003(5). The Texas Supreme Court has defined "'supported in whole or part by public funds' to include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without the public funds." *Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 63 (Tex. 2015). Thus, section 552.003(1)(A)(xii) encompasses only those private entities that are dependent on public funds to operate as a going concern, *see id.* at 61, and only those entities acting as the functional equivalent of the government, *see id.* at 62.

You state, and provide documentation demonstrating, the network is a non-profit section 501(c)(3) corporation that operates as a public charity "to provide programs that improve the quality of cancer care available to patients in communities throughout the United States." You explain the network does not perform a traditional governmental role. You state the network is "not sustained by public funding and would continue to be a going concern without the benefit of public funds." Further, you inform us the network receives 92% of its revenues through *quid pro quo* contractual arrangements with third parties that are not Texas governmental bodies. Based on your representations and our review, we find the network is not sustained by public funds for purposes of the Act. *See id.* at 63. Therefore, the network does not fall within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code and is not subject to the Act. Accordingly, the network need not respond to the present request for information.²

²As we are able to make this determination, we need not address the network's or the third parties' remaining arguments against disclosure of 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 630214

Enc. Submitted documents

c: Requestor
(w/o enclosures)

27 Third Parties
(w/o enclosures)