



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 9, 2015

Ms. Andrea Slater Gulley  
Counsel for the Amarillo Independent School District  
Underwood Law Firm, P.C.  
P.O. Box 9158  
Amarillo, Texas 79105-9158

OR2015-13917

Dear Ms. Gulley:

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# 570878.

The Amarillo Independent School District (the "district"), which you represent, received a request for information pertaining to a specified pharmacy benefits request for proposals. The district states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>1</sup> The district also states, and provides documentation showing, it notified the following third parties of the district's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should

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<sup>1</sup>Although the district also raises section 552.101 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the district no longer asserts this exception. See Gov't Code §§ 552.301, .302.

not be released: Aetna; Aetna Public Sector; Blue Cross Blue Shield of Texas (“Blue Cross”); CVS Caremark; Diplomat Pharmacy, Inc.; Maxor National Pharmacy Services Corp. (“Maxor”); OptumRx, Inc. (“OptumRx”); Phoenix Benefits Management, L.L.C.; and Prime Therapeutics. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 correspondence from Blue Cross, Maxor, and OptumRx objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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*, No. 12-1007, slip op. at 17 (Tex. June 19, 2015). The district represents the submitted information pertains to a competitive bidding situation. In addition, the district informs us the submitted information relates to a contract to provide pharmaceutical benefits management to the district where the district has awarded the bid. The district also states it requests bids for this service “at least once every three years.” The district contends release of the submitted information would give a prospective bidder an unfair competitive advantage by allowing it to undercut future bids, preventing the district from receiving the lowest bid possible. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).<sup>3</sup>

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

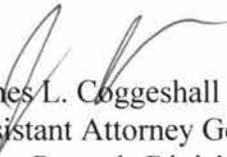
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<sup>2</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 570878

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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