



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 13, 2015

Mr. Robert Patterson  
Open Records Coordinator  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2015-22300A

Dear Mr. Patterson:

Our office issued Open Records Letter No. 2015-22300 (2015) on October 23, 2015. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on October 23, 2015. *See generally id.* § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 592864.

The Texas Health and Human Services Commission (the "commission") received a request for all proposals submitted to the commission in response to a specified request for proposals and all related evaluation materials. You state the commission is releasing most of the requested information to the requestor. Although the commission takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the information may implicate the proprietary interests of Amerigroup Texas, Inc. ("Amerigroup"); Superior HealthPlan, Inc. ("Superior"); and United Healthcare ("United"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the companies' rights to submit arguments to this office as to why the submitted information should not be released. *See id.* § 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 Amerigroup and Superior. We have reviewed the submitted arguments and the submitted information.

Initially, Superior provides documentation showing, and the commission affirms, the requestor is no longer seeking any of Superior's submitted information. Accordingly, we find this information is not responsive to the request. This ruling does not address the public availability of non-responsive information, and the commission need not release it in response to this request. However, we will consider the arguments for the remaining information responsive to the request.

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) of the Government Code 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 United explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude United 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, 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. Accordingly, the commission may not withhold the submitted information on the basis of any proprietary interest United may have in the information.

Amerigroup claims portions of its information are excepted under section 552.104 of the Government Code. Section 552.104(a) 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. Amerigroup states it has competitors. In addition, Amerigroup states release of the information at issue would give an advantage to its competitors and put Amerigroup at a disadvantage when bidding on future contracts. After review of the information at issue and consideration of the arguments, we find Amerigroup has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we do not discuss Amerigroup's remaining arguments against disclosure of this information.

We note some of the information issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the commission may withhold the information we have marked under section 552.104(a) of the Government Code. The commission must release the remaining responsive information, but may only release any copyrighted information in accordance with copyright law.

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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 592864

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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