



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2015

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Thockmorton Street, Third Floor
Fort Worth, Texas 76102-6311

OR2015-23164

Dear Mr. Trevino:

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# 586316 (ORR# W045025).

The City of Fort Worth (the "city") received a request for all contracts submitted by a health care insurance agency or provider offering insurance services, and all new "iterations" of health care insurance contracts negotiated by the city.¹ The city claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The city also states, and provides documentation showing, it notified interested third parties, including Blue Cross Blue Shield of Texas ("Blue Cross"), Envision Pharmaceutical Services, LLC ("Envision"), Express Scripts, Inc. ("Express"), Group & Pension Administrators, Inc. ("GPA"), MedImpact Healthcare Systems, Inc. ("MedImpact"), and United HealthCare Services, Inc. ("United") of the city's receipt of the request for information and of their right to submit arguments to this office as to why the requested

¹The city sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

information should not be released.² *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, Envision, Express, GPA, MedImpact, and United objecting to the release of the some of the information at issue under the Act. We have considered the submitted arguments and reviewed the submitted information.

Initially, the city informs us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-14275 (2015) and 2015-20333 (2015). In Open Records Letter No. 2015-14275, we determined the city may withhold the information at issue under section 552.104 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2015-14275 was based have changed. Therefore, the city may continue to rely on Open Records Letter No. 2015-14275 as a previous determination and withhold the information previously ruled upon in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Some of remaining submitted information, including information pertaining to GPA, was at issue in Open Records Letter No. 2015-20333. Although GPA was notified of the request for its information pursuant to section 552.305 of the Government Code in Open Records Letter No. 2015-20333, it did not submit comments in response to the request at issue in that previous ruling. In Open Records Letter No. 2015-20333, we concluded the city must release the information pertaining to GPA in accordance with copyright law, but may withhold the remaining information at issue under section 552.104 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the information that was previously released in accordance with Open Records Letter No. 2015-20333, unless its release is expressly prohibited by law or the information is confidential by law. Although GPA now

²The city also notified the following third parties of the request: Aetna Life Insurance Company; Alliance Work Partners; American Healthways Services, LLC; BeneCard, Prescription Benefit Facilitator; CIGNA; Discovery Benefits; Employee Benefits Corporation; Imaging Network Administrators, LLC; InScope Health, LLC; P&A Group; RX Preferred; and Viverae.

raises section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the city may not now withhold any of the previously released information under section 552.104 of the Government Code on behalf of GPA. Furthermore, we understand the law, facts, and circumstances on which Open Records Letter No. 2015-20333 was based have not changed. Accordingly, we conclude the city may continue to rely on Open Records Letter No. 2015-20333 as a previous determination and withhold or release the identical information in accordance with that ruling.³ *See* ORD 673. We will address the city's arguments against the release of the submitted information not encompassed by Open Records Letter Nos. 2015-14275 and 2015-20333.

Section 552.104(a) of the Government Code 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). The city represents the remaining information at issue pertains to a competitive bidding situation. The city states it has selected three vendors and is currently in contract negotiations with each. The city argues release of the information at issue would harm the city's negotiation position with the selected vendors, or other vendors should the current contract negotiations fail. Upon review, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.⁴

To conclude, the city may continue to rely on Open Records Letter Nos. 2015-14275 and 2015-20333 as previous determinations and release or withhold the identical information in accordance with them. The city may withhold the remaining information under section 552.104(a) of the Government Code.

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.

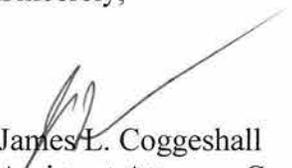
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we do not address the other arguments to withhold this information.

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 586316

Enc. Submitted documents

c: Requestor
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