



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

Ms. Brandi M. Youngkin
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-23588A

Dear Ms. Youngkin:

This office issued Open Records Letter No. 2015-23588 (2015) on November 9, 2015. Since that date, the city informs us that, at the time of its request for a decision, the city failed to submit the requested administrative services agreement with United Healthcare Services, Inc. ("UHC") for review. Thus, we must address the interests of UHC whose proprietary interests are at issue for this newly submitted information. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on November 9, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 596918 (Plano File 15-028).

The City of Plano (the "city") received a request for information related to health insurance contracts. Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of UHC. Accordingly, you state you notified UHC of the request for information and of its right to submit arguments to this office as to why the information at issue 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 UHC. We have considered the submitted arguments and reviewed the submitted information.

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. UHC states it has competitors. In addition, UHC states it will be directly and substantially injured by the release of the information at issue to its competitors and seeks to withhold certain terms of the submitted contract. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, at 831, 839. After review of the information at issue and consideration of the arguments, we find UHC 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 information UHC has indicated under section 552.104(a) of the Government Code.¹ The remaining information must be released.

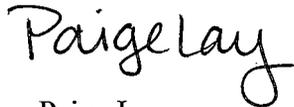
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 596918

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Sandra Westlund
Associate Director, E&I Legal Services
UnitedHealthcare
9700 Health Care Lane, MN017-E300
Minnetonka, Minnesota 55343
(w/o enclosures)

Ms. Sarette B. Williams
Associate General Counsel
UnitedHealthcare
185 Asylum Street, CT039-020A
Hartford, Connecticut 06103
(w/o enclosures)