KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2015

Ms. Patricia Guidry
Director of Risk Management
Aldine Independent School District
14910 Aldine-westfield Road
Houston, Texas 77032-3099

OR2015-23744

Dear Ms. Guidry:

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# 587041.

The Aldine Independent School District (the "district") received a request for information pertaining to health care insurance contracts. You state the district will release some information to the requestor.[1] Although you take no position with respect to the public availability of the requested information, you state its release may implicate the proprietary interests of certain third parties, namely: Aetna Life Insurance Company ("Aetna") and CaremarkPCS Health, L.L.C. ("Caremark"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Aetna and Caremark. We have considered the submitted arguments and reviewed the submitted information.

[1]You informed this office United Healthcare Specialty Benefits notified the district that it did not object to release of its information.

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. Caremark states it has competitors. In addition, Caremark states the information it has indicated, if released, would give advantage to a competitor, allowing the competitor to undercut Caremark by bidding at lower prices or refining their service offerings and guarantees to better compete with Caremark. 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 Caremark 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 information Caremark has indicated under section 552.104(a).[2]

Section 552.110(b) of the Government Code protects commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999).

Aetna asserts some of the information at issue is commercial or financial information, the release of which would cause substantial competitive harm. Upon review of the submitted arguments under section 552.110(b), we conclude Aetna has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the information at issue would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982). Further, we note the contract at issue was awarded to Aetna. This

---

[2]As our ruling is dispositive, we need not address Caremark's remaining arguments against disclosure of this information.

office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3); ORD 541 at 8. We therefore conclude the district may not withhold Aetna's information at issue under section 552.110(b).

In summary, the district may withhold the information Caremark has indicated under section 552.104(a) of the Government Code. 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/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

Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 587041

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Federico Preuss
Executive Director and Senior Counsel
Government Sector and Labor
Aetna
151 Farmington Avenue, RE6A
Hartford, Connecticut 06156
(w/o enclosures)

CaremarkPCS Health, L.L.C.
c/o Mr. Robert H. Griffith
Foley & Lardner, L.L.P.
321 North Clark Street, Suite 2800
Chicago, Illinois 60654-5313
(w/o enclosures)