



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2015

Ms. Maureen Franz  
Deputy Chief Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2015-24917

Dear Ms. Franz:

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# 588622.

The Texas Health and Human Services Commission (the "commission") received a request for the initiative plans and proposals for participation in the Network Access Improvement Program submitted by the University of Texas Southwestern Medical Center (the "university"), Parkland Memorial Hospital, and the Texas Tech University Health Science Center. The requestor subsequently withdrew his request for the initiative plan and proposal from Parkland Memorial Hospital, and the commission provided the requestor some documents pertaining to the Texas Tech University Health Science Center. Although the commission takes no position as to whether the remaining responsive information is excepted under the Act, the commission informs us release of this information may implicate the proprietary interests of Amerigroup Texas, Inc. ("Amerigroup"). Accordingly, the commission states, and provides documentation showing, it notified Amerigroup 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). The commission also provides documentation showing it notified the university of its right to submit comments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from both the university and Amerigroup. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Amerigroup makes arguments for withholding certain information the commission did not submit to this office for review. Because we do not have this information before us for review, this ruling does not address any such information, and is limited to the information the commission submitted as responsive. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested, or representative sample if voluminous amount of information was requested).

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 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university is competing for revenue in the healthcare marketplace. In addition, the university states releasing the information it has marked would give its competitors information they could use to enhance their positions and reputations in the healthcare marketplace, and thereby compromise the university's position in a competitive market. After review of the information at issue and consideration of the arguments, we find the university has established the release of the information it has marked would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information the university marked under section 552.104(a) of the Government Code.

A private third party may also invoke section 552.104(a). *Id.* at 831, 839. Amerigroup raises section 552.104(a) for information it marked and states it competes against other managed care organizations. In addition, Amerigroup states release of the marked information would reveal "the business practices that make [it] superior to its competitors" and would allow competitors to make adjustments in their own programs so they could beat Amerigroup in future requests for proposals. After review of the submitted information and consideration of the arguments, we find Amerigroup has established the release of the information it has marked would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information Amerigroup marked under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, the commission may withhold the information both the university and Amerigroup have marked 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.

---

<sup>1</sup>As our ruling is dispositive, we need not address Amerigroup's remaining arguments against disclosure.

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,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 588622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Rachael Padgett  
Counsel to Amerigroup Texas  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(w/o enclosures)

Ms. Jennifer Burnett  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902  
(w/o enclosures)