



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2015-25686

Dear Mr. Junell:

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# 589712 (TRS Ref. No. FOIA Group 16-1).

The Teacher Retirement System of Texas (the "system") received a request for a copy of the current contract for the system's Care Program, including all administrative fees and associated performance guarantees. You state the system will redact information under section 552.136(c) of the Government Code, as well as personal e-mail addresses pursuant to Open Records Decision No. 684 (2009).¹ Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of Aetna Life Insurance Company ("Aetna"). You state, and provide documentation showing, you notified Aetna of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from Aetna. We have considered the submitted arguments and reviewed the submitted information.

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

The system and Aetna state most of the submitted information is subject to previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-07293 (2015) and 2015-10191 (2015). In response to those rulings, Aetna filed lawsuits against this office styled *Aetna Life Insurance Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001648 (53rd Dist. Ct., Travis County, Tex.) and *Aetna Life Insurance Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-002233 (353rd Dist. Ct., Travis County, Tex.). Aetna states the two lawsuits have been consolidated under Cause No. D-1-GN-15-001648. Accordingly, we will allow the trial courts to resolve whether the information at issue in the pending lawsuit must be released to the public. However, we will consider Aetna's submitted arguments with respect to disclosure of the remaining information that was not at issue in the prior rulings.

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). 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. Aetna states it has competitors. In addition, Aetna states release of the information in Appendices III, IV, and V would allow a competitor to "identify the strengths and weaknesses of Aetna's administration services and compete more effectively." Aetna also states release of its line-item and unit prices within Appendix II would allow a competitor to determine Aetna's costs for the specific programs and services at issue, leading to harm of Aetna's competitive advantages. 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*, 466 S.W.3d at 839. After review of the information at issue and consideration of the arguments, we find Aetna has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the system may withhold the line-item and unit prices within Appendix II and Appendices III, IV, and V in their entireties under section 552.104(a).²

²As our ruling is dispositive, we need not address Aetna's remaining argument against disclosure of this information.

In summary, we will allow the trial courts to resolve whether the information at issue in Cause No. D-1-GN-15-001648 must be released to the public. The system may withhold the line-item and unit prices within Appendix II and Appendices III, IV, and V in their entireties under section 552.104 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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 589712

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Matt C. Wood
For Aetna
Weisbart Springer Hayes
212 Lavaca Street, Suite 200
Austin, Texas 78701
(w/o enclosures)