



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 1, 2016

Mr. Richard A. McCracken  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2016-02370

Dear Mr. McCracken:

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# 596166 (Fort Worth Reference Nos. W047053 and W047199).

The City of Fort Worth (the "city") received two requests for information pertaining to a specified request for proposals.<sup>1</sup> You state you have released some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. The city also states, and provides documentation showing, it notified interested third parties, including Aetna Life Insurance Company ("AETNA"); American Healthways Services, LLC ("American"); Blue Cross Blue Shield of Texas ("Blue Cross"); Envision Pharmaceutical Services, LLC ("Envision"); Express Scripts, Inc. ("Express"); and MedImpact Healthcare Systems, Inc. ("MedImpact") 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 information should not be released.<sup>2</sup> See Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory

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<sup>1</sup>You state the first requestor modified his request in response to a cost estimate. See Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

<sup>2</sup>The city also notified the following third parties of the request: Alliance Work Partners; BeneCard, Prescription Benefit Facilitator; CIGNA; Discovery Benefits; Employee Benefits Corporation; Gallagher Benefit Services, Inc.; Group & Pension Administrators, Inc. ("GPA"); Imaging Network Administrators, LLC; InScope Health, LLC; P&A Group; RX Preferred; United HealthCare Services, Inc.; Wage Works; and Viverae.

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 AETNA, American, Blue Cross, Envision, Express, and MedImpact 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), 2015-20333 (2015), and 2015-23164 (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. In Open Records Letter No. 2015-20333, we concluded the city (1) may continue to rely on Open Records Letter No. 2015-14275 as a previous determination, (2) must release the information pertaining to GPA in accordance with copyright law, and (3) may withhold the remaining information at issue under section 552.104 of the Government Code. In Open Records Letter No. 2015-23164, we determined the city (1) 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, and (2) may withhold the remaining information under section 552.104 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter Nos. 2015-14275, 2015-20333, and 2015-23164 were based have changed. Therefore, the city may continue to rely on Open Records Letter Nos. 2015-14275, 2015-20333, and 2015-23164 as previous determinations and withhold or release the information previously ruled upon in accordance with them. *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). We will address the city's arguments against the release of the submitted information not encompassed by Open Records Letter Nos. 2015-14275, 2015-20333, and 2015-23164.

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.<sup>3</sup>

In summary, the city may continue to rely on Open Records Letter Nos. 2015-14275, 2015-20333, and 2015-23164 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/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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/akg

Ref: ID# 596166

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Mr. Federico Preuss  
Aetna  
151 Farmington Avenue, RE6A  
Hartford, Connecticut 06156  
(w/o enclosures)

Mr. D. Keith George  
BlueCross BlueShield of Texas  
P.O. Box 655730  
Dallas, Texas 75265  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.

Ms. Jennifer Asewicz  
Envision Pharmaceutical Services  
1301 East Broward Boulevard,  
Suite 300  
Fort Lauderdale, Florida 33301  
(w/o enclosures)

Ms. Melissa Copeland  
For Express Scripts  
Schmidt & Copeland LLC  
P.O. Box 11547  
Columbia, South Carolina 29211  
(w/o enclosures)

Mr. Emebet Selassie  
MedImpact Healthcare Systems  
10181 Scripps Gateway Court  
San Diego, California 92131  
(w/o enclosures)

Mr. Matthew Ray  
For American Healthways Services  
SRW Law  
500 North Akard, Suite 2860  
Dallas, Texas 75201  
(w/o enclosures)

Mr. John Aissis  
United Healthcare  
185 Asylum Street  
Hartford, Connecticut 06103  
(w/o enclosures)

Ms. Jessica Galt  
Discovery Benefits  
4321 20<sup>th</sup> Avenue Southwest  
Fargo, North Dakota 58103  
(w/o enclosures)

Mr. Jeff McPeters  
Group & Pension Administrators  
12770 Merit Drive, 2<sup>nd</sup> Floor  
Dallas, Texas 75251  
(w/o enclosures)

Mr. H. LaMonte Thomas  
CIGNA  
900 Cottage Grove Road  
Bloomfield, Connecticut 06152  
(w/o enclosures)

Mr. Scott Terres  
Alliance Work Partners  
2525 Wallingwood Drive, Building 5  
Austin, Texas 78746  
(w/o enclosures)

Mr. Leonard Van Noord  
BeneCard  
1820 56<sup>th</sup> Street  
Galveston, Texas 77551  
(w/o enclosures)

Mr. Michael Rizzo  
P&A Group  
17 Court Street, Suite 500  
Buffalo, New York 14202  
(w/o enclosures)

Mr. Johnny Momrik  
Employee Benefits Corporation  
P.O. Box 44347  
Madison, Wisconsin 53744  
(w/o enclosures)

Ms. Kathryn Westhius  
Imaging Network Administrators  
733 3<sup>rd</sup> Avenue, 11<sup>th</sup> Floor  
New York, New York 10017  
(w/o enclosures)

Mr. Mike Bruce  
InScope Health  
12018 Sunrise Valley Parkway, Suite 100  
Reston, Virginia 20191  
(w/o enclosures)

Mr. Jeff Malone  
RX Preferred  
2542 North Mt. Juliet Road  
Mt. Juliet, Tennessee 37122  
(w/o enclosures)

Mr. Michael Hoppe  
Viverae  
10670 North Central Expressway,  
Suite 700  
Dallas, Texas 75231  
(w/o enclosures)

Ms. Barbara Gonzales  
Wage Works  
1100 Park Place  
San Mateo, California 94403  
(w/o enclosures)

Mr. P. Todd Dorton  
Gallagher Benefit Services  
4547 Lakeshore Drive  
Waco, Texas 76710  
(w/o enclosures)