



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2016

Mr. Trent B. Kreinke
Counsel for the Val Verde Hospital District
Reed, Claymon, Meeker, & Hargett, P.L.L.C.
5608 Parkcrest Drive, Suite 200
Austin, Texas 78731

OR2016-13753

Dear Mr. Kreinke:

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# 614441.

The Val Verde Hospital District (the "district"), which you represent, received a request for (1) a specified agreement between the district and Methodist Healthcare System of San Antonio, Ltd., L.L.P. ("MHS") and all amendments to that agreement and (2) agendas, minutes, and financial reports of the board meetings of the district and a specified company.¹ You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of MHS. Accordingly, you state, and provide documentation showing, the district notified MHS of the request for information and of its right to submit arguments to this office as to why the submitted information 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

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from MHS. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks information created through the date of the request, as well as certain information created after the date of the request. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the district maintained or had a right of access to as of the date it received the request.

Next, we note the requestor has asked the district to answer questions. In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or create responsive information that does not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1 (1990). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the district has made a good-faith effort to do so.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104. 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 district states it competes with other hospitals and health care providers that are attempting to expand operations in the region. The district states it has specific marketplace interests in the submitted information. Further, the district states the release of the submitted information would place the district at a competitive disadvantage. After review of the information at issue and consideration of the arguments, we find the district 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 submitted information under section 552.104(a) of the Government Code.²

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "Lee Seidlits", with a long horizontal flourish extending to the right.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 614441

Enc. Submitted documents

c: Requestor
(w/o enclosures)