



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Mr. Robert W. Patterson
Open Records Coordinator
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2016-20402A

Dear Mr. Patterson:

This office issued Open Records Letter No. 2016-20402 (2016) on September 9, 2016. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2016-20402 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 635386.

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to advanced planning documents submitted to the Centers for Medicaid and Medicare Services since August 1, 2015.¹ The commission states it is releasing some of the requested information. The commission does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the commission states, and provides documentation showing, it notified Truven Health Analytics, Inc. ("Truven") of the commission's receipt of the request for information and of Truven's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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). We have received comments from Truven objecting to the release of the

¹The commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

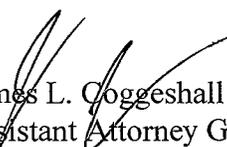
information at issue under section 552.104 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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, 841 (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.* Truven states it has competitors and argues release of the information at issue would cause it substantial competitive harm. Upon review, we find Truven has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the submitted 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 635386

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)