



UNIVERSITY MEDICAL CENTER
OF EL PASO



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September 8, 2022

The Honorable Ken Paxton
Attorney General, State of Texas
Attn: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

VIA ELECTRONIC FILING

**RE: TPIA Request to the El Paso County Hospital District (herein, the “District”)
Dated August 18, 2022
Governmental Body PIC ID: HM22-468
Texas.gov Request ID: 66153746
Trace Number: 30OR68593828**

Dear General Paxton:

I am writing this letter, pursuant to Section 552.301 of the Texas Government Code, to seek your opinion concerning whether certain requested information is excepted from release. Pursuant to Texas Government Code, Section 552.301(d), this letter is copied to requestor Marin Paredes (herein, “Requester”) as notice.

Mr. Paredes requests documents concerning “[a]ny financial analysis, feasibility studies or marketing studies created or received for a University Medical Center at El Paso Cancer Center.” A copy of the request received by the District on August 17, 2022 is included as **Exhibit A**.

Background

The items requested by Mr. Paredes approximate 57 pages of documents; much of the information is duplicative and a representative sample is being provided for review. We feel that the documents pertain to the “information related to competition or bidding” exception under Texas Government Code section 552.104. The District requests that this information be withheld in their entirety as opposed to redacted information being excluded.

Applicable Statutory Exception

Information Related to Competition or Bidding Information – Section 552.104

Under Texas Government Code Section 552.104, “[i]nformation is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor ... in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.

The Texas Legislature has recognized the competitive nature of hospital districts and their provision of hospital services in communities with other privately operated hospitals. Under the Texas Open Meetings Act, governing boards of hospital districts are permitted to discuss, in closed session, “pricing or financial planning information relating to a bid or negotiation for the arrangement or provision of services or product lines to another person if disclosure of the information would give advantage to *competitors of the hospital* ... or information relating to a proposed new service or product line of the ... hospital district ... before publicly announcing the service or product line.” Texas Gov’t Code Sec. 551.085(a), emphasis added.

According to the Health Resources and Services Administration (HRSA), the El Paso community is a Medically Underserved Area (MUA)¹. The recruitment and retention of physicians and examination of new business opportunities for the District is an ongoing effort. District engages in discussions with physicians and other entities for these business opportunities and typically enters into non-disclosure agreements with these entities/individuals.

The publicity associated with discussion of competitive service lines has a strong potential to create a situation where another hospital outbids the hospital district for those services, and thus places the hospital district, and ultimately the taxpayers, at a disadvantage.

The documents under **Attachment A** are examples information contained in various documents which relate to market and feasibility analyses of a cancer treatment facility, for which competitors of the District would have substantial interest. The District, and ultimately the taxpayers, have invested significant resources in the market and feasibility analyses and the information contained therein could place another healthcare facility at an unfair advantage by utilizing this information. As such, the District requests that the documents under **Attachment A** and others which are similar in nature be withheld.

Conclusion

In conclusion, District believes that Texas Government Code section 552.104 is applicable in the instant request and said documents should be excepted from release.

¹ <https://data.hrsa.gov/tools/shortage-area/mua-find>

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We appreciate your prompt attention to this request for opinion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Omar Villa', written in a cursive style.

Omar Villa
Chief Legal Officer and
Assistant El Paso County Attorney

c: Martin Paredes (without exhibits and attachments)
via email to martin@martinparedes.com