



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

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Mr. Richard L. Webb
The University of Texas System
Office of General Counsel
201 West Seventh Street
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OR97-1149

Dear Mr. Webb:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We originally ruled in this matter in Open Records Letter No. 95-1268 (1995). We now reconsider a portion of that previous ruling. The reconsideration was assigned ID# 39195.

The University of Texas System (the "system") solicited proposals for "medical cost management services" for its workers' compensation insurance program. The proposals concern programs to contain costs through, among other things, pre-authorization of medical visits; contracting for services with selected medical care providers; automated processing, reviewing, and screening of medical claims; and making billing adjustments. The system received five separate requests for copies of the submitted proposals. Some of those requests also asked for information about evaluations of the proposals and other information relied upon by the system in selecting the winning proposal. In Open Records Letter No. 95-1268 we considered all of the system's and the third parties' arguments against disclosure. We ruled that certain portions of the requested information must be withheld and others released.

In our previous ruling, however, we did not consider any of the third party arguments based upon the "commercial or financial information" prong of section 552.110 of the Government Code. Open Records Letter No. 95-1268 (1995) at 2-3. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. This presented a substantial change in this office's determinations under section 552.110. See Open Records Letter No. 95-1268 (1995) at n. 2. Thus, we have notified all of the companies whose information is the subject of this request concerning the issuance of Open Records Decision No. 639 (1996). This office informed the system and the 13 companies that this office would withdraw and reconsider our previous ruling to the extent that the ruling concluded that the requested records could not be withheld under section 552.110 as

“commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” We, therefore, gave the companies an opportunity to provide our office with additional briefing as to why any of the requested information could be withheld as “commercial or financial information” under the reasoning set forth in Open Records Decision No 639 (1996). *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990). We now reconsider Open Records Letter No. 95-1268 to the extent that we failed to assess whether the requested information could be withheld as “commercial or financial information.” In all other respects, we affirm our decision in Open Records Letter No. 95-1268 (1995).

Only one company responded to our notification concerning the issuance of Open Records Decision No. 639 (1996), HealthCare Compare. Two other companies had previously made general arguments under the commercial or financial prong of section 552.110; thus, we will also consider their arguments against disclosure. The following companies, however, either failed to respond to our notification or failed to make an argument under the “commercial or information” prong of section 552.110: Argus Services Corp., Comprehensive Rehabilitation Association Inc., CorVel Corp., Crawford & Company, Gay & Taylor, Inc., GENEX (formerly General Care Review), Health Benefit Management, Inc., Health Economics Corp., Intracorp. and Mediq Review Services, Inc. We have no basis, therefore, to conclude that these companies’ information is excepted from disclosure. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure). The system may not withhold any information of these companies based on the commercial or financial prong of section 552.110.

As stated above, in Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts’ interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government’s ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.* After reviewing the arguments of Anchor Risk Management Services, Inc. (“Anchor”), HealthCare Compare, and Medical Business Management Services (“Medical Management”), we find that some of the companies have

established that portions of their companies' information is protected under the commercial or financial information prong of section 552.110.

First, we do not believe that Anchor has established that disclosure of any portion of its proposal would cause substantial harm to its competitive position. Next, HealthCare Compare argues that two portions of its proposal not found to be protected in Open Records Letter No. 95-1268 (1995), its pricing information and its volume of bills currently received, should be withheld under the commercial or financial prong of section 552.110. After considering HealthCare Compare's arguments, we find that it has established that its pricing information should be withheld. HealthCare Compare, however, makes no specific argument as to the remaining information. Thus, the information reflecting the volume of bills currently received may not be withheld. We have marked that information that the system must withhold under section 552.110. Finally, Medical Management argues generally that several categories of documents must be withheld. As in our previous ruling, we presume that the information reflecting Medical Management's "methodologies, forms and techniques" is the type of information it seeks to withhold. After reviewing the submitted materials, we find that some of Medical Management's proposal may be withheld under Open Records Decision No. 639 (1996). We have marked the information that Medical Management has established is protected, pages 2.1.d-1, 2.2-1-2.2-4, 2.5-1, and portions of 5.2. The system should withhold the marked information as indicated in this ruling and in Open Records Letter No 95-1268 (1995). The remaining information should be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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JDB/ch

Ref: ID# 39195

Enclosures: Marked documents

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