



May 18, 1999

Ms. Lavergne Schwender
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-1377

Dear Ms. Schwender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124256.

Harris County and the Harris County Hospital District (collectively, the “district”) received a request for the awarded proposals submitted for Job No. 98/0012. The proposals requested are identified by the requestor as having been submitted by Central Healthcare Service Inc. and Medical Advocacy Services for Healthcare, Inc. You indicate that you have declined to release the portion of this information that is marked “confidential.” You also indicate that the proprietary interest of third parties is implicated by the release of the subject information. You have submitted the responsive information to our office for review.¹ You have asserted no position regarding the application of any exception to disclosure to the subject information.

This office informed the implicated third parties, Central Healthcare Service Inc. and Medical Advocacy Services for Healthcare, Inc., of the request and of their obligation to claim the exceptions to disclosure they believe apply to the requested information, together with their arguments as to why they believe the claimed exceptions apply. *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)* (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

¹You have also submitted to this office the bids provided by four other bidders, National Eligibility Express, Inc., Cardon Healthcare Network, Inc., Hospital Solutions, Inc., and L.T.D. Financial Services. It does not appear, however, that the requestor seeks these proposals, nor do you indicate that they are responsive to the request for information. This ruling, therefore, does not address the disclosure of these proposals.

exceptions in certain circumstances). The notification stated that if the respective company did not respond within 14 days of receipt of the notice, this office will assume that the company has no privacy or property interest in the requested information. NCO Financial Systems, Inc., the successor to Central Healthcare Service Inc., responded; Medical Advocacy Services for Healthcare, Inc., did not. Since Medical Advocacy Services for Healthcare, Inc., did not raise an exception to the Public Information Act or establish how any exception to disclosure applies to any portion of its submitted bid, we cannot conclude that the submitted information is excepted from disclosure under section 552.110 of the Government Code. *See* Open Records Decision Nos. 639 at 4 (1996) (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), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). The Medical Advocacy Services for Healthcare, Inc. proposal documents must, therefore, be released.

NCO Financial Systems, Inc., (“NCO”) argues that portions of the Central Healthcare Service, Inc. proposal are excepted from disclosure by section 552.110 of the Government Code as trade secrets. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

The Texas Supreme Court has adopted the definition of “trade secret” from the Restatement of Torts, section 757, which holds a “trade secret” to be:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts, *supra*; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a *prima facie* case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; see Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure).

We have reviewed NCO's arguments and conclude that it has not established that its proposal is a trade secret. The information must therefore 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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 124256

encl. Marked documents

cc: Ms. Karen Willey
c/o Mr. Douglas Cardon
Cardon Healthcare Network, Inc.
3 Crogans Park Drive, Suite 206
The Woodlands, Texas 77380
(w/o enclosures)