



June 15, 1999

Ms. Joan Carol Bates  
Medicaid Program Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-1655

Dear Ms. Bates:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124920.

The Texas Department of Health (the "department") received a request for a copy of documents showing payments made by the department to Birch & Davis Health Management Corporation ("Birch & Davis") under the Texas Health Network Administrator Contract for the Primary Care Case Management Managed Care Plan. You state that the department considers all expenditures of public funds in the administration of the Medicaid program to be public information. However, you explain that Birch & Davis may consider this payment information to be proprietary information that is protected from disclosure by the Government Code. Gov't Code § § 552.007; .305.

Since the property rights of a third party may be implicated by the release of the requested information, this office notified Birch & Davis of the request for information. *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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Birch & Davis responded to our notice by arguing that the requested information was protected under section 552.110 as commercial or financial information.<sup>1</sup>

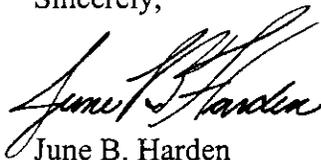
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<sup>1</sup>In response to our notice, Birch & Davis resubmitted its November 20, 1998 brief concerning a previous open records request. In its brief, Birch & Davis argued that certain requested documents were protected from disclosure under both prongs of section 552.110. In this instance, Birch & Davis's trade secret arguments are not applicable to the requested information. Therefore, this office will only address the company's arguments under the commercial or financial prong of section 552.110.

Section 552.110 protects the property interests of third 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. 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 or financial information. Thus, this office relied on *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), as a judicial decision and applied the standard set out in *National Parks* to determine whether information is excepted from public disclosure under the commercial or financial prong of section 552.110. However, the Third Court of Appeals recently held that *National Parks* is not a judicial decision within the meaning of section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.—Austin May 20, 1999, no pet. h.). Because neither the department nor Birch & Davis has cited to a statute or judicial decision that makes the requested information privileged or confidential, you may not withhold the requested information under the commercial or financial information prong of section 552.110.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/nc

Ref.: ID# 124920

Encl. Submitted documents

cc: Ms. Kathy Mitchell  
Consumers Union  
1300 Guadalupe, Suite 100  
Austin, Texas 78701  
(w/o enclosures)