



June 22, 1999

Ms. Belinda R. Perkins
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR99-1722

Dear Ms. Perkins:

You ask this office to reconsider our ruling in Open Records Letter No. 99-1020 (1999). Your request for reconsideration was assigned ID# 125792.

The Teacher Retirement System of Texas (the "system") received a request for information submitted by two companies in response to a request for a specified system contract, as well as "a list of the board members for TRS-Care together with their addresses." In Open Records Letter No. 99-1020, this office concluded in part that Merck-Medco Managed Care, L.L.C. ("Merck-Medco") did not establish that certain sections of its contract were protected from disclosure under sections 552.101, 552.104, and 552.110. The system asks that we reconsider our conclusion that the following information is not protected from disclosure under sections 552.104 and 552.110: the last sentence of section 3.2, section 6.3, and portions of schedule B. Merck-Medco has provided additional information for this office to consider in this request for reconsideration.

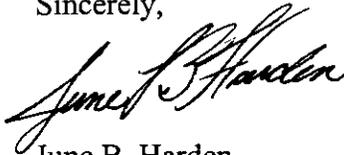
Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." As we stated in Open Records Letter No. 99-1020, section 552.104 protects the interests of governmental bodies, not third parties. Open Records Decision No. 592 (1991). Since the *system* does not raise section 552.104, this section is not applicable to the requested information. *Id.* (Gov't Code § 552.104 may be waived by governmental body).

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. When seeking to withhold information under section 552.110, it is the governmental body's or the private third party's burden to establish that section 552.110 applies. *See* Open Records Decision

Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). We have examined the Merck-Medco arguments. We do not believe that Merck-Medco has established that the contract information falls within the protection of section 552.110.¹ Open Records Decision No. 541 at 8 (1990) (general terms of contract with state agency are usually not excepted from disclosure), 514 (1988) (Attorney General reluctant to find that entire contract with governmental body is protected by section 552.110.), 494 at 6 (1988); *see also* Gov't Code § 552.022(3); *see generally* Freedom of Information Act Guide & Privacy Act Overview (1995) 136-138, 140-141, 151-152 (disclosure of prices is cost of doing business with government). *Cf.* 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978). We, therefore, affirm Open Records Letter No. 99-1020.

If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 125792

encl. Submitted documents

cc: Mr. C. J. Andrews
1309 Southwood Boulevard
Arlington, Texas 76013
(w/o enclosures)

¹In 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. 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 and 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.). Therefore in the future, if you seek to withhold information under the commercial or financial information prong of section 552.110, you must cite to a statute or judicial decision that makes the requested information privileged or confidential.