



April 28, 2000

Ms. Patricia Muniz-Chapa  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2000-1668

Dear Ms. Muniz-Chapa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135085.

The University of Texas System (the “university”) received a request for “a copy of the response prepared by PCS for the program currently in place for the employees of The University of Texas System.” You indicate that the information responsive to the request consists of a proposal submitted to the university by PCS Health Systems, Inc. (“PCS”), and that the university has released the proposal to the requestor, with certain information redacted. You have provided for our review the information that was redacted. You assert no exception to the release of this information, and you state that the university “takes no position with respect to the request.” However, you have notified PCS of the request by a letter dated March 9, 2000, in compliance with section 552.305 of the Government Code. *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). PCS responded to the notice, and asserts that the redacted information is excepted from disclosure by section 552.110 of the Government Code.

Section 552.110 protects the interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. *See* Gov’t Code § 552.110. In its comments to this office, PCS asserts that the redacted

information, in its entirety, constitutes trade secret information and is thus excepted from required public disclosure by section 552.110(a). A “trade secret”

may consist of 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 single or ephemeral events 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 also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). We do not agree that all of the marked information meets the above-cited definition of trade secret information. However, as to that information which we believe does not comprise trade secrets, we have also considered whether PCS has established that the information is protected by section 552.110(b). *See* Gov’t Code § 552.110(b) (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). Upon careful consideration of the arguments submitted by PCS, we believe PCS has demonstrated through specific factual assertions that it actually faces competition, and that PCS would likely suffer substantial competitive harm if the information that has been redacted were to be released to the public. We therefore conclude that the university must withhold this information pursuant to section 552.110 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

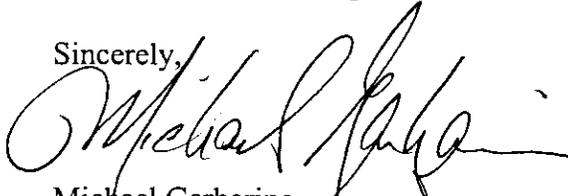
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<sup>1</sup>We note that PCS also submitted copies of the responsive information for our review, with marked redactions. PCS marked slightly more information for redaction than the university had marked. We agree with the markings of PCS. We have accordingly marked the additional information, on the university's copy of the responsive information, that the university must not release (see pp. 8 and 133).

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ljp

Ref: ID# 135085

Encl. Submitted documents

cc: Mr. Timothy A. Ogurek  
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2221 Justin Road, Suite 119, PMB 337  
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(w/o enclosures)

cc: Mr. Robert W. Heglin  
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(w/submitted documents)