



August 21, 2000

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health & Mental Retardation
P O Box 12668
Austin, Texas 78711-2668

OR2000-3198

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138186.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for all information which has been on the department's web site supporting the NorthSTAR managed behavioral health care program ("NorthSTAR"), all information developed or used by the department or any actuaries regarding payment rates used in NorthSTAR, a copy of the final Request for Proposal for contractors for NorthSTAR, all bid proposals submitted, all correspondence between the department and a named individual, and any "transcripts of testimony, reports or presentations from" that person. You decline to take a position as to whether the information should be withheld or released, but instead rely on the parties submitting bids to assert exceptions to required disclosure. You have not provided the requested proposals for our review. We assume that you have released all other responsive information.

Because the property and privacy rights of third parties may be implicated by the release of the requested information, you notified Comprehensive Behavioral Care, Inc., Green Oaks Behavioral Healthcare Services, and Southwest Community Behavioral Care, whose information is responsive to the request. *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). The third party notice must include a copy of the written request for information and a statement in the form prescribed by the attorney general.¹ This office has not received any arguments or briefs from either Green Oaks Behavioral Healthcare Services or Southwest Community Behavioral Care to support a claim that the information should be withheld. Therefore, we have no basis to conclude that those companies' proposals are excepted from disclosure. *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).

Comprehensive Behavioral Care, Inc., ("CompCare") did respond to the section 552.305 notice by writing directly to this office: "CompCare has no claim that the information requested be excluded from public disclosure." and "We appreciate the need for public disclosure as part of the ongoing role of government to be a good steward of both public funds and public trust." The department must release all requested information to the requestor.

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

¹ The form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at www.oag.state.tx.us.

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 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 138186

Encl. Submitted documents

cc: Ms. Catherine Greaves
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(w/o enclosures)

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