



May 7, 2001

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney Generals
Post Office Box 12548
Austin, Texas 78711-2548

OR2001-1856

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146834.

The Office of the Attorney General (the "OAG") received a request for "copies of all public information relating to the application for physician joint negotiation as provided under Chapter 29, Insurance Code, by physicians from Henderson, Texas, and whose representative is Ms. Linda Davis" and "copies of any other Open Records Requests made for this same information." You state that you have released all responsive information not excepted from disclosure. You claim, however, that certain responsive information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You indicate that the release of the submitted information may implicate the privacy or property interests of third parties and that you have made a good faith effort to notify all third parties pursuant to section 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause

¹You state that "[a] representative sample Contract Information Form is attached as Exhibit B." We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

substantial competitive harm to the person from whom the information was obtained. The governmental body, or interested third party, raising this exception must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

First, you seek to withhold the "Contract for Information Form for Fee Related Negotiations" (the "Form") submitted to the OAG by each physician member of the Physician Joint Negotiation Group of Henderson, Texas (the "Group"), a representative sample of which was submitted as Exhibit B. We have considered the arguments submitted by the Group, by the individual physician members of the Group, and by several insurance companies. Based on these arguments and our review of the submitted information, we conclude that the two tables contained in the Forms submitted to the OAG by each physician member of the Group are excepted from disclosure under section 552.110(b) of the Government Code. We also conclude, however, that the first page of the Form, which we have marked, does not contain commercial or financial information or trade secret information and may not be withheld under section 552.110.²

Next, you seek to withhold the "Blue Cross and Blue Shield of Texas, Inc. Primary Care Physician and Specialty Care Provider Point of Service Agreement" (the "Agreement") submitted to this office as Exhibit C. Blue Cross and Blue Shield of Texas ("BCBSTx") argues that it would suffer substantial competitive injury upon disclosure of the commercial and financial information contained in the Agreement. Specifically, BCBSTx argues that disclosure of the Agreement would provide its competitors with "specific information that would allow them to undercut BCBSTx in specific competitive bidding proceedings" and would give its competitors "a general roadmap of BCBSTx's contract development and negotiation procedure, which would provide the competitors invaluable benefit in future competitive situations." BCBSTx further argues that disclosure of the Agreement would allow its competitors to attack BCBSTx in future competitive bids and potentially attack its existing agreements. Based on these arguments and our review of the submitted information, we conclude that the Agreement is excepted from disclosure under section 552.110(b) of the Government Code.³

To summarize, we conclude that: (1) the two tables contained in the Forms submitted to the OAG by each physician member of the Group are excepted from disclosure and must be withheld under section 552.110(b) of the Government Code; (2) the first page of the Form.

²As we resolve your request for a ruling concerning the information in Exhibit B under section 552.110(b) of the Government Code, we need not address the other claimed exceptions.

³As we resolve your request for a ruling concerning the information in Exhibit C under section 552.110(b) of the Government Code, we need not address the other claimed exceptions.

which we have marked, does not contain trade secret information or commercial or financial information and must be released to the requestor; and (3) the Agreement is excepted from disclosure and must be withheld under section 552.110(b) of the Government Code.

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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/rr

Ref: ID# 146834

Encl: Marked documents

cc: Mr. C. J. Francisco, III
Senior Counsel
Texas Medical Association
401 West 15th Street
Austin, Texas 78701-1680
(w/o enclosures)

cc: Linda Davis, MBA
Representative
Henderson Memorial Hospital
300 Wilson Street
Henderson, Texas 75652
(w/o enclosures)

cc: Brenda M. Vozza-Zeid, M.D.
713 North High Street
Henderson, Texas 75652
(w/o enclosures)

cc: Yogesh G. Pai, M.D.
Pediatrics
105 North High Street
Henderson, Texas 75652
(w/o enclosures)

- cc: David C. Craig, M.D.
Craig Eye Associates
P.O. Box 680
1600 Highway 79 South
Henderson, Texas 75653
(w/o enclosures)
- cc: M. Joyce Starling, M.D.
116 South Marshall
Henderson, Texas 75654
(w/o enclosures)
- cc: F. Sanford Ladage, M.D.
325 Wilson Street
Henderson, Texas 75652-5997
(w/o enclosures)
- cc: Larry J. Laurich
618 North University Drive
Nacogdoches, Texas 75961
(w/o enclosures)
- cc: Khoren Hekimian
705 West Duval
Troup, Texas 75789
(w/o enclosures)
- cc: C. Victor Haley
Fairchild Price, Thomas, Haley &
Willingham, L.L.P.
1801 North Street
P.O. Drawer 613668
Nacogdoches, Texas
75963-1668
(w/o enclosures)
- cc: William A. Zeis
Fulbright & Jaworski L.L.P.
600 Congress Avenue
Suite 2400
Austin, Texas 78701
(w/o enclosures)
- cc: Stacy L. Cozad
Carrington, Coleman, Sloman &
Blumethal, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(w/o enclosures)
- cc: Cheryl S. Camin
Gardere, Wynne, Sewell, L.L.P.
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201-4761
(w/o enclosures)
- cc: William C. Davidson
Minter, Joseph & Thornhill, L.L.P.
811 Barton Springs Road, Suite 800
Austin, Texas 78704-1196
(w/o enclosures)
- cc: LeeAnn Solomon Christ
Associate General Counsel
Private Healthcare Systems, Inc.
1100 Winter Street
Waltham, Massachusetts 02451
(w/o enclosures)
- cc: Gisele M. Molloy
Senior Counsel
Routing W-26A
900 Cottage Grove Road
Hartford, Connecticut 06152
(w/o enclosures)
- cc: Margaret B. Jones, Esq.
Director and Associate Counsel
3200 Highland Avenue
Downers Grove, Illinois 60515
(w/o enclosures)

cc: Kate Bowen
Regional General Counsel
Law Department
2777 Stemmons, Freeway, Suite 300
Dallas, Texas 75207
(w/o enclosures)

cc: Yasser F. Zeid, M.D.
OB/GYN Associates of Henderson,
L.L.P.
105 North High Street
Henderson, Texas 75652
(w/o enclosures)

cc: Penny Hobbs
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701
(w/o enclosures)

cc: Sue Ann Williams, M.D., FACOG
105 North High
Henderson, Texas 75652
(w/o enclosures)

cc: Jennifer M. Kopps
Fortis Health
P.O. Box 3050
Milwaukee, Wisconsin 53201-3050
(w/o enclosures)

cc: David M. Adams
CEO
HealthSmart
P.O. Box 53010
Lubbock, Texas 79453
(w/o enclosures)

cc: Russell C. Brown
Wellborn, Houston, Adkison, Mann,
Sadler, & Hill, L.L.P.
P.O. Box 1109
Henderson, Texas 75653-1109
(w/o enclosures)

cc: Roger C. Sessions, M.D.
Dogwood Orthopaedic Clinic, P.A.
812 North High, Suite A
Henderson, Texas 75652
(w/o enclosures)