



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 8, 2003

Mr. John M. Knight  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2003-3111

Dear Mr. Knight:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180778.

The City of Lubbock (the "City") received a request for proposals submitted in response to Request for Proposal ("RFP") 159-02/DC, which the City initiated for pharmacy benefit management services. The requestor expresses particular interest in proposals from AdvancePCS ("Advance"), Caremark, and Express Scripts. However, you explain the City did not receive proposals from either Caremark or Express Scripts. You inform us you have released responsive information supplied by one vendor as the information contained no copyrighted material. However, with respect to information submitted to the City by the remaining bidders, you assert the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You provide supporting documentation showing that the City has notified Advance, Eckerd Health Services ("Eckerd"), and United Provider Services ("United") to afford each entity an opportunity to supply objections to release of the submitted 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). We have reviewed the submitted information and we have considered the exceptions asserted by the City, Eckerd, and Advance.

This office previously issued Open Records Letter No. 2003-1563 (2003) in response to your request for a decision concerning the same information at issue in the current request. In Open Records Letter No. 2003-1563, we concluded the City had to withhold some of the submitted information under section 552.110 of the Government Code. Based on your

arguments and our review of the information and briefs submitted by both Advance and Eckerd, we find the City has met the criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001).<sup>1</sup> See Open Records Decision No. 673. Therefore, we conclude the City must release or withhold the submitted information in accordance with Open Records Letter No. 2003-1563.

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

---

<sup>1</sup> The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 180778

Enc: Submitted documents

c: Mr. Kerry O'Brien  
Proposal Manager  
Systemed, L.L.C.  
100 Parsons Pond Drive  
Franklin Lakes, New Jersey 07417  
(w/o enclosures)

Mr. Aman Zahiruddin  
J.C. Penney Legal Department  
J.C. Penney Company, Inc.  
6501 Legacy Drive, MS 1104  
Plano, Texas 75024-3698  
(w/o enclosures)

Ms. Suzanne Broderick  
Legal Counsel  
AdvancePCS  
9501 East Shea Boulevard  
Scottsdale, Arizona 85260-6719  
(w/o enclosures)

Mr. Keith Dunavant  
President  
United Provider Services  
8721 Airport Freeway  
North Richland Hills, Texas 76180  
(w/o enclosures)