



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 23, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2003-3516

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181564.

The Texas Health and Human Services Commission (the "commission") received a request for a copy of a contract between Clarendon National Insurance Company ("Clarendon") and the commission, and "any subcontracts that Clarendon is using which involve the CHIP award." You indicate that you will release portions of the requested information. However, you assert that Clarendon may have a proprietary interest in some of the responsive information. Although you take no position regarding the proprietary nature of this information, you have notified Clarendon of the request for information and its opportunity to submit comments to this office. *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 to disclosure in certain circumstances). Clarendon argues that portions of the requested information are excepted from disclosure under section 552.110(b) of the Government Code. We have also received correspondence from USA Managed Care Organization, Inc. ("USA"), a subcontractor under the Clarendon CHIPS program. We have considered all of the submitted arguments and have reviewed the submitted information.

USA indicated in an April 7, 2003 letter to this office that it intended to oppose the disclosure of some of the requested information. However, as of the date of this ruling, this office has not received any arguments from USA explaining why it believes the requested information is excepted from disclosure. Therefore, USA has provided this office with no ground for concluding that any of the submitted information is excepted from disclosure. As a result, none of the submitted information may be withheld based on USA's proprietary

interests. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm); 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

Next, we address Clarendon's argument under section 552.110(b) of the Government Code. Section 552.110(b) excepts from public disclosure commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause 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). We find that Clarendon has not provided a specific factual or evidentiary showing that release of any of the submitted information would cause it substantial competitive harm. *See* Open Records Decision No. 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative); *see also* Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Therefore, the commission must release the submitted information in its entirety.

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

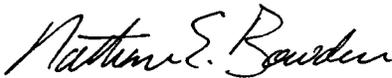
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/VGS/sdk

Ref: ID# 181564

Enc: Submitted documents

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