



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2005

Ms. Rosalinda García
Senior Assistant County Attorney
Harris County
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2005-09261

Dear Ms. García:

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# 234242.

The Harris County Hospital District (the "district") received two requests for information related to the CHRISTUS Health Gulf Coast organization ("CHRISTUS"), as well as information concerning the size and capacity of district owned facilities. You state that some of the requested information has been released, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.107, 552.110, and 552.111 of the Government Code. You also indicate that release of a portion of the submitted information may implicate the proprietary interests of CHRISTUS, and provide documentation showing that you have notified CHRISTUS of the request and its opportunity to submit comments to this office. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered all submitted exceptions and reviewed the submitted information.

Initially, we note that you claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.107, 552.110, and 552.111 of the Government Code. However, although you raise these exceptions, you have not submitted arguments explaining how these exceptions apply to the submitted information. *See Gov't Code § 552.301(e)(1)* (requiring the governmental body to explain the applicability of the raised exception). Therefore, we conclude that you have waived these exceptions. *See id.* §§ 552.301, .302.

Next, we address CHRISTUS's argument that some of the submitted information does not qualify as "public information" under the Act. Section 552.002 of the Government Code defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The holding in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) makes clear that almost all information in the physical possession of a governmental body is "public information" subject to the Act. CHRISTUS argues that a report which estimates the value of one of its hospitals is not "public information" for purposes of the Act. We note, however, that this report relates to a hospital which the district is attempting to purchase from CHRISTUS. Furthermore, the report is in the physical possession of and maintained by a governmental body as defined by section 552.003 of the Government Code. See Gov't Code § 552.003(1) (defining "governmental body" for purposes of the Act). Thus, the district has maintained the report at issue in the course of transacting its official business. See Gov't Code § 552.002. Therefore, CHRISTUS's report is public information that must fall within an exception to disclosure under the Act in order to be withheld.

CHRISTUS next claims that the same report is excepted from disclosure based on the non-disclosure agreement between CHRISTUS and the district. We note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. See *Indus. Found.*, 540 S.W.2d at 677. In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. See Attorney General Opinion JM-672 (1987); see also Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the report at issue is encompassed by an exception to disclosure, it must be released to the requestor, notwithstanding any expectation or agreement to the contrary.

CHRISTUS argues that the same report, as well as another report, are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial 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[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); see also *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

CHRISTUS argues that two reports which estimate the value of one of its hospitals should be withheld from disclosure under section 552.110 because they constitute commercial or

financial information the release of which would cause substantial competitive harm to CHRISTUS. *See* Gov't Code § 552.110(b). CHRISTUS states that it is currently attempting to sell the hospital in question. CHRISTUS represents that one of the reports was prepared for CHRISTUS, while the other report was prepared for the district. CHRISTUS argues that although the second report was prepared for the district, "it is based entirely or largely on information provided by [CHRISTUS]." CHRISTUS also informs us that both reports contain inaccurate information related to the valuation of its hospital, the release of which would "negatively affect [its] ability to negotiate the best possible price for the [h]ospital." CHRISTUS has submitted the affidavits of two "real-estate experts" which support this contention. Based on our review of CHRISTUS's arguments, the submitted affidavits, and the information at issue, we conclude that CHRISTUS has demonstrated that the release of the submitted valuation methodologies and conclusions located in the reports would cause substantial competitive harm to CHRISTUS. Accordingly, we conclude that the district must withhold this information, which we have marked, from disclosure pursuant to section 552.110(b) of the Government Code. *See* Open Records Decision No. 639 at 4 (1996). However, we determine that CHRISTUS has not demonstrated that any portion of the remaining information constitutes commercial or financial information, the release of which would cause CHRISTUS substantial competitive harm. *See* Open Records Decision Nos. 552 at 5-6 (1990), 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, pursuant to section 552.110(b), the district must withhold only those portions of the two reports that we have marked.

Finally, CHRISTUS claims that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released. In doing so, however, the information must be released in accordance with applicable copyright laws for any information protected by copyright.

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).

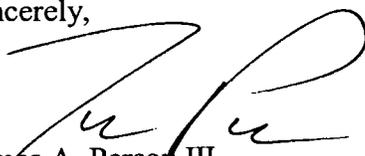
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 234242

Enc. Submitted documents

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