ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

Mr. W. Montgomery Meitler
Senior Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714

OR2006-00614

Dear Mr. Meitler:

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# 240524.

The Texas Department of Family and Protective Services (the "department") received a request for the winning proposals submitted in response to the department's RFP regarding family group conferencing services. You claim that portions of the submitted proposals are excepted from disclosure under sections 552.117 and 552.136 of the Government Code. The department takes no position on whether the remainder of the submitted proposals is excepted from disclosure, but you state that release of this information may implicate the proprietary interests of Lutheran Social Services of the South, Inc. ("Lutheran"), All Church Home for Children, Inc. ("All Church"), and the Child and Family Guidance Center (the "Center"). Accordingly, you inform us and provide documentation showing that you notified Lutheran, All Church, and the Center of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted proposals.

Initially, we note that section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body's notice to

submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received arguments from Lutheran, All Church, or the Center for withholding the submitted proposals. Therefore, we have no basis to conclude that the release of any portion of the submitted proposals would harm the proprietary interests of these third parties. *See* Gov't Code § 551.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude that the department may not withhold any portion of the submitted proposals on the basis of any proprietary interest that Lutheran, All Church, or the Center may have in the proposals.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the department employees in question have timely elected under section 552.024 to keep their personal information confidential. Therefore, the personal information you have marked must be withheld under section 552.117 of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. In accordance with section 552.136, the department must withhold the insurance policy and checking account numbers you have marked in the submitted proposals.

In summary, the department must withhold the information you have marked under sections 552.117 and 552.136 of the Government Code. The remainder of the submitted proposals must be released to the requestor.

You request that this office issue a previous determination to allow the department to withhold similar employee personal information and access device numbers. We decline to issue such a ruling at this time. Therefore, 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# 240524

Enc. Submitted documents

c: Ms. Beth Boone
Mediation Services of Texas
5718 Westheimer #700
Houston, Texas 77057
(w/o enclosures)

Mr. Kurt M. Senske
Luteran Social Services of the South
P.O. Box 140767
Austin, Texas 78714-0767
(w/o enclosures)

Mr. Wayne Carson
All Church Home for Children
1424 Summit Avenue
Fort Worth, Texas 76102
(w/o enclosures)

Ms. Carol E. Lucky
Child and Family Guidance Center
8915 Harry Hines Boulevard
Dallas, Texas 75235
(w/o enclosures)