



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Mr. John P. Danner
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283

OR2006-04515

Dear Mr. Danner:

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# 247895.

The City of San Antonio (the "city") received a request for the winning proposal and subsequent contract awarded for the Heath Maintenance Organization for Medicare Retiree project. While you raise no exceptions on behalf of the city regarding the requested information, you state that it may contain proprietary information excepted from disclosure under the Act. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city notified Aetna of the request for information and of its right to submit arguments explaining why this information should not be released. *See Gov't Code § 552.305* (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 in certain circumstances). We have reviewed the submitted arguments.

Initially, we must address the city's procedural obligations under the Act. We note that the city did not submit copies of the requested information to this office within fifteen business days as required by section 552.301(e) of the Government Code. *See Gov't Code § 552.301(e)(1)(D)* (governmental body required to submit within fifteen business days of receiving an open records request copy of the specific information requested or

representative samples thereof). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Because the third-party interests at issue here can provide a compelling reason to withhold information, we will address Aetna's submitted arguments.

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); Open Records Decision No. 661 (1999).

Aetna claims that portions of its bid are proprietary commercial or financial information, the release of which would cause substantial competitive harm to its interests. After reviewing the information at issue and Aetna's arguments, we find that Aetna has made a specific factual or evidentiary showing that the release of the following information would cause the company substantial competitive harm: list of subcontractors contained in Section II, Tab B, page 13; references contained in Section II, Tab D, page 24; call center information; Other Member Service Operations information contained in Section II, Tab E, page 66; and Geo Access Maps. Thus, the city must withhold this information, which we have marked, under section 552.110(b). However, Aetna has only made general assertions that the release of the remaining information at issue would result in competitive harm. Because Aetna has failed to meet its burden under section 552.110(b) with respect to this information, the city may not withhold any of the remaining information at issue on the basis of a proprietary interest that Aetna may have in that information.

We note, however, that the remaining information contains insurance policy numbers subject to section 552.136 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. The city must therefore withhold the insurance policy numbers we have marked under section 552.136.

In summary, the city must withhold: 1) the marked information in Aetna's bid under section 552.110(b) of the Government Code; and 2) the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 247895

Enc. Submitted documents

c: FOIA Request Coordinator
ONVIA
1260 Mercer Street
Seattle, Washington 98109
(w/o enclosures)

Mr. Mark R. Chulick
Regional Counsel
Southwest Region
Aetna
2777 Stemmons Freeway
Dallas, Texas 75207
(w/enclosures)