



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2007

Mr. Dan F. Junell  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR2007-13474

Dear Mr. Junell:

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# 291733.

The Teacher Retirement System of Texas (the "system") received two requests for the winning proposal and current contract between the system and Blue Cross and Blue Shield of Texas ("BCBS") to provide Health Plan/Medical Claims Reimbursement and Health Plan/Administrative Services for the system's active members. One of the requestors also seeks the proposal submitted by the other finalist for the contract at issue, Aetna U.S. Healthcare ("Aetna").<sup>1</sup> You state that the system has released some of the requested information. You argue that the submitted information is excepted from disclosure under section 552.104 of the Government Code. While you also raise sections 552.101, 552.110,

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<sup>1</sup>The system informs us it sought and received clarification from one of the requestors regarding a portion of his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

and 552.136 of the Government Code as possible exceptions to disclosure for the submitted information, you make no arguments as to whether the submitted information is excepted under those sections. However, you have informed BCBS and Aetna of the request and each entity's right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You inform us that the submitted information relates to an existing contract with BCBS to provide health plan administrative services to the system. You state that the system's need for such services is ongoing. Further, you inform us that the system "is presently engaged in a procurement process to select a vendor to provide the same health plan administrative services" currently provided under the system's contract with BCBS. You explain that the system has issued a new RFP to provide the same services. You contend that release of the submitted information would give a prospective vendor an unfair advantage and "compromise [the system's] bargaining position in the current procurement process." Having considered your arguments, we find that you have demonstrated that section 552.104 is applicable to the information at issue. We therefore conclude that the system may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we do not reach the remaining arguments.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eeg

Ref: ID# 291733

Enc. Submitted documents

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