



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2007

Ms. Debra G. Rosenberg  
Atlas & Hall, L.L.P.  
P. O. Box 3725  
McAllen, Texas 78502

OR2007-16023

Dear Ms. Rosenberg:

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 #296279.

The McAllen Independent School District (the "district"), which you represent, received a request for copies of all information given to district board members regarding the evaluation of proposals submitted by companies that were competing to provide the district with insurance and employee benefits services. You state that the district does not object to the release of the requested information. You also state that releasing the requested information may implicate the proprietary interests of third parties. Accordingly, you state that you have notified the third parties of the request and of their opportunity to submit arguments to this office as to why their information should not be released to the requestor. *See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have received correspondence from two of the six third parties whose information is at issue, Innoviant and Assured Benefits Administrators ("Assured"). We have reviewed the submitted information and arguments.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from four of the six third parties explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes proprietary information of those companies, and none of it may be withheld on that basis. *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). We now turn to Innoviant's and Assured's arguments against disclosure of the submitted information.

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. *Id.* § 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).

Innoviant states that the information it provided in the specified bid process could be used by others to gain an unfair competitive advantage. Assured states that its administration and stop loss rates are extremely competitive. Based upon these representations, we find that both Innoviant and Assured have made only conclusory arguments regarding the release of the requested information. Neither has demonstrated that the release of its information would cause it substantial competitive injury. Accordingly, none of the submitted information may be withheld under section 552.110(b). As this is the only exception raised, the information at issue must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

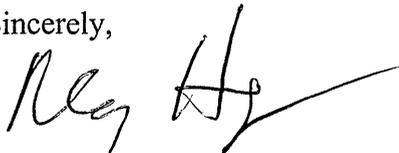
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 296279

Enc. Submitted documents

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Mr. Mike McGinnity  
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