



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 8, 2008

Ms. Connie Crawford  
Assistant County Attorney  
El Paso County  
4815 Alameda, 8<sup>th</sup> Floor, Suite B  
El Paso, Texas 79905

OR2008-13825

Dear Ms. Crawford:

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#324060.

The R.E. Thomason General Hospital of the El Paso County Hospital District (the "district") received a request for bid submissions, correspondence, notes, and all documentation related to two specific Requests for Proposals. Although you raise no exception to disclosure of the requested information on behalf of the district, you state that the request may implicate the property or privacy interests of third parties. Pursuant to section 552.305(d) of the Government Code, you state that you have notified the interested third parties, Elite Medical Transport of Texas L.L.C. ("Elite"), American Medical Response, and Dominion Ambulance, L.L.D., of the request and of their opportunity to submit comments to this office as to why this information should not be released. *See Gov't Code § 552.305(d); Open Records Decision No. 542* (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 arguments from a law firm representing Elite. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply not later than the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the district

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

received the request for information on July 15, 2008. You did not request a decision from this office until July 30, 2008. Consequently, you failed to comply with the procedural requirements of section 552.301 in requesting the decision from our office. Therefore, the requested information is presumed to be public information. *See id.* § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will consider whether the submitted information must be withheld.

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 the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, American Medical Response and Dominion Ambulance have not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding that any portion of the requested information constitutes proprietary information of these companies, and the district may not withhold any portion of the requested information 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), 542 at 3 (1990).

Elite claims that "personal personnel information" is excepted under section 552.102 of the Government Code. However, this section only applies to information in the personnel files of governmental employees, as opposed to private employees. *See* Gov't Code § 552.102. As such, section 552.102 is not applicable in this instance and the information at issue may not be withheld on that basis.

Next, Elite claims that requested information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure information that, if released, would give an advantage to a competitor or bidder. Gov't Code § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitted information to the government), 522 (1989) (discretionary exceptions in general). Because the district does not seek to withhold any information pursuant to this section, we find that section 552.104 is not applicable to Elite's information. *See* ORD 592 (governmental body may waive section 552.104).

Elite also claims that the information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: 1) trade secrets and 2) commercial or financial information, the release of which would cause a third party substantial competitive harm. Gov't Code § 552.110. 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[.]" *Id.* § 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.*; *see also* Open Records Decision No. 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). Upon review, we determine that Elite has not demonstrated, based on a specific factual or evidentiary showing, that release of the information would likely result in substantial competitive harm. Accordingly, the district may not withhold the information at issue on that basis. As no further arguments against disclosure have been made, the requested 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 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). If the governmental body does not file suit over 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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/jb

Ref: ID#324060

Enc. Submitted documents

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