



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2009

Mr. Brooks Landgraf  
Shafer, Davis, O'Leary & Stoker  
P.O. Drawer 1552  
Odessa, Texas 79760

OR2009-14194

Dear Mr. Landgraf:

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# 357795.

The Ector County Hospital District (the "district") received a request for contracts related to a specified 6.2 million dollar deal between the district and the McKesson Corporation ("McKesson"). Although you take no position as to the public availability of the submitted contract supplement, you state its release may implicate the proprietary interests of McKesson. Thus, pursuant to section 552.305 of the Government Code, you notified McKesson of the request and of the corporation's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *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 under in certain circumstances). We have reviewed the submitted information.

Although the requestor seeks the specified contracts in their entirety, you only submitted a contract supplement, identified by number 604759, for our review. To the extent any other contract or supplement exists which (1) is between the district and McKesson, (2) relates to the specified 6.2 million dollar deal, and (3) is not the subject of a prior or pending ruling by this office, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

We next turn to the public availability of the submitted contract supplement. 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 McKesson explaining why any portion of the submitted contract supplement should not be released. Therefore, we have no basis to conclude McKesson has protected proprietary interests in the submitted information. *See id.* § 552.110; 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). Consequently, the district may not withhold the submitted supplement on the basis of any proprietary interest McKesson may have in the information. As you raise no exceptions to disclosure, the submitted contract supplement must be released in its entirety to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 357795

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)