



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

Ms. Neera Chatterjee
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-14519

Dear Ms. Chatterjee:

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# 358867 (OGC# 120789).

The University of Texas System (the "system") received a request for vendor proposals submitted in response to a specified request for proposal issued by the system. Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, StayWell, WebMD, PayFlex, and Health

¹The interested third parties are: The StayWell Company d/b/a StayWell Health Management ("StayWell"), WebMD Health Services Group, Inc. ("WebMD"), PayFlex Systems USA, Inc. ("PayFlex"), and Health Fitness Corporation ("Health Fitness").

Fitness have not submitted to this office any reasons explaining why the submitted information should not be released. Thus, we have no basis for concluding that any portion of the submitted information constitutes the proprietary information of these third parties. *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). Therefore, the system may not withhold any of the submitted information based on any proprietary interests that StayWell, WebMD, PayFlex, and Health Fitness may have in the information.

We note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). As no exceptions to disclosure have been raised, the submitted information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 358867

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)

Mr. Kevin Davisson
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