



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 4, 2010

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

OR2010-00045

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# 366648 (OGC# 121756).

The University of Texas System (the "university") received a request for the contract between the university and WebMD Health Services ("WebMD") for a Health Risk Assessment Program. The university takes no position on whether the submitted information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of WebMD. Accordingly, you inform us, and provide documentation showing, that you notified WebMD of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received correspondence from a representative of WebMD. We have considered the submitted arguments and have reviewed the submitted information.

WebMD claims a portion of the submitted information is excepted under section 552.101 of the Government Code, but has not directed our attention to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101.¹ *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We therefore conclude that the university may not withhold any of the submitted information under section 552.101 of the Government Code.

¹Section 552.101 of the Government Code Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses common-law and constitutional privacy. Gov't Code § 552.101.

WebMD also raises section 552.104 of the Government Code, which excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. We note, however, that section 552.104 only protects the interests of a governmental body and is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). In this instance, the university has not argued that the release of any portion of the submitted information would harm its interests in a particular competitive situation under section 552.104. Because the university has not submitted any arguments under section 552.104, we conclude that the university may not withhold any portion of the submitted information under section 552.104 of the Government Code.

WebMD claims that its pricing information is excepted under section 552.110(b) of the Government Code, which 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.*; *see also* Open Records Decision No. 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).

Upon review of WebMD's arguments and the information at issue, we find that WebMD has made only conclusory allegations that the release of its information at issue would result in substantial damage to their competitive position. Thus, WebMD has not demonstrated that substantial competitive injury would result from the release of any of the submitted information. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Furthermore, we note that the pricing information contained in a contract with a governmental body, such as the contract at issue, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, no portion of the submitted information may be withheld under section 552.110(b). As no further exceptions are raised, the submitted information must be released in its entirety.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 366648

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)