



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2010

Ms. Connie Crawford  
Assistant County Attorney  
El Paso County Hospital District  
4815 Alameda, 8th Floor, Suite B  
El Paso, Texas 79905

OR2010-02367

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# 370429.

The El Paso County Hospital District d/b/a the University Medical Center of El Paso (the "district") received a request for "all written and electronic documents relating to the evaluation of [a specified request for proposal, including] the notes and correspondence of all individuals involved in the evaluation as well as any meeting notes or minutes that may exist." Although the district takes no position as to the disclosure of the submitted information, you state that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you have notified Sky City Communications, Black Box, Desert Communications, and Q Services 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. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume 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.

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 any of the interested third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have 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. Accordingly, the district may not withhold the submitted information based upon the proprietary interests of the third parties.

We note a portion of the submitted information may be subject to section 552.117(a)(1) of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the cellular telephone number of a district employee. Provided the employee pays for the cellular telephone service with his own funds, the district must withhold this marked information under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 to keep his information confidential.

We also note portions of the submitted information are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c).

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137(c) excludes an e-mail addresses "provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]" *Id.* § 552.137(c)(2). Section 552.137 is also not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses that are not of the types specifically excluded under section 552.137(c). Unless the district receives consent from the owners of the marked e-mail addresses to release this information, they must be withheld under section 552.137.<sup>3</sup>

In summary, the district must withhold the cellular telephone number we have marked, provided the employee pays for the cellular telephone service with his own funds, under section 552.117(a)(1) of the Government Code to the extent the employee concerned timely elected under section 552.024 to keep his information confidential. The district must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the district receives consent from the owners of the e-mail addresses to release this information. The remaining information must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 370429

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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