



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 2010

Ms. Lisa Ott Laky
General Counsel
Austin Travis County
Mental Health Mental Retardation Center
P.O. Box 3548
Austin, Texas 78764

OR2010-02484

Dear Ms. Laky:

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# 370510.

The Austin Travis County Mental Health Mental Retardation Center (the "center") received a request for all proposals, presentations, offer clarifications, and bid evaluation documents pertaining to a recent prescription drug benefit services request for proposals issued by the center, as well as a copy of the contract awarded to the winning bidder. You state the center has released most of the requested information. Although you take no position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of US Script, Inc. ("US Script"). Thus, pursuant to section 552.305 of the Government Code, you notified US Script of the request and of the company'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 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 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 US Script explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude US Script has any protected proprietary interest 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. Consequently, the center may not withhold any of the submitted information on the basis of any proprietary interest US Script may have in the information.

However, the submitted information contains documents 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. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection 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). Accordingly, the submitted information must be released to the requestor, but any information protected by copyright must 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 370510

Enc. Submitted documents

cc: Requestor
(w/o enclosures)