



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2010

Ms. Connie Crawford  
Assistant County Attorney  
El Paso County Attorney  
4815 Alameda, 8<sup>th</sup> Floor, Suite B  
El Paso, Texas 79905

OR2010-04305

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# 373909.

The University Medical Center of El Paso (the "center") received a request for copies of all contracts between the center and a named individual from 1998 to the date of the request. 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 a third party. Accordingly, you state, and provide documentation showing, you notified the named individual of the request for information and of her 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 received comments from the named individual. We have considered the submitted arguments and reviewed the submitted information.

Initially, the named individual asserts that the submitted contracts contain information that is subject to section 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace,

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, the information at issue in this instance pertains to a contract between the center, which is a governmental body, and the named individual for the provision of eye care services. Accordingly, we find there is a legitimate public interest in this information. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Next, the named individual claims release of the submitted information would cause her substantial competitive harm. Thus, we understand the named individual to claim exception to disclosure under section 552.110(b) of the Government Code. Section 552.110(b) 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, and 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).

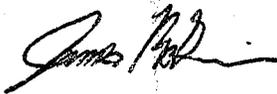
Upon review of the named individual's arguments and the information at issue, we find the named individual has made only conclusory allegations that the release of the submitted information would result in substantial damage to her competitive position. Thus, the named individual has not demonstrated 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). Further, 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).

Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, we find the named individual has failed to demonstrate any of the submitted information constitutes commercial or financial information the disclosure of which would cause her substantial competitive harm for purposes of section 552.110(b), and none of it may be withheld on that basis. As no further exceptions to disclosure are raised, the submitted 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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 373909

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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