



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Trent B. Krienke  
Davis & Wilkerson  
P.O. Box 2283  
Austin, Texas 78768-2283

OR2010-07692

Dear Mr. Krienke:

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#380600.

The Somervell County Hospital Authority d/b/a Glen Rose Medical Center ("GRMC"), which you represent, received a request for GRMC's banking information, including account numbers and balances, and a list of all GRMC employees and their wages. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

We note that a portion of the requested information is subject to section 552.022(a)(2). Section 552.022(a)(2) provides:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

---

<sup>1</sup>We assume that 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.

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code. § 552.022(a)(2). The requested information includes an "Employee Roster By Department" that shows the pay rates of GRMC employees. You claim that the information at issue is excepted from disclosure under section 552.104. Section 552.104(b) provides that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under [the Act] does not apply to information that is excepted from required disclosure under this section." *Id.* § 552.104(b). Therefore, we will consider your arguments under section 552.104 for the information at issue.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including when a governmental body competes with private entities in the marketplace. *See* Open Records Decision No. 592 (1991). Under section 552.104, a governmental body may withhold information in order to maintain its competitive advantage in the marketplace if it can demonstrate (1) it has specific marketplace interests and (2) there is a possibility of specific harm to those marketplace interests if the requested information is released. *See* Open Records Decision No. 593 ("competitive aspect" of previous version of section 552.104 applies to governmental bodies as bidders).

You contend that a nearby competing hospital has expressed interest in partnering with GRMC and that some of GRMC's doctors have left GRMC to go work for the competing hospital. Further, you state that the competing hospital has offered to conduct an audit of GRMC at no cost to the hospital and has placed a billboard for the competing hospital 200 yards from GRMC. You argue that release of the information at issue would provide the competing hospital with a competitive advantage. However, in this instance, you have not demonstrated that release of the information at issue would result in any actual or specific harm to GRMC's marketplace interests in a particular competitive situation. Therefore, no portion of the requested information may be withheld under section 552.104.

Next, we address your section 552.136 of the Government Code argument against disclosure of the submitted account information. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a

transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the bank account numbers, which we have marked, must be withheld under section 552.136 of the Government Code.<sup>2</sup>

In summary, GRMC must withhold the bank account numbers we have marked pursuant to section 552.136 of the Government Code. 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/jb

Ref: ID#380600

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</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 bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.