



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 28, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
William B. Travis Building
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2010-09510

Dear Ms. Rangel:

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#384385.

Fort Bend County (the "county") received two requests for: 1) the county's contract with Correctional Healthcare Management ("CHM") for inmate healthcare services at the county jail; 2) CHM's winning proposal and the evaluation/scoring sheets; 3) the original prospectus, its revisions and addendums, that guided the vendors in their bids to obtain services; 4) any remarks or scoring made by the team or individuals who decided on the awarded contract; and 5) the specific and general county language that would allow CHM's contract to be terminated immediately. Although you take no position with respect to the public availability of the submitted information, you state that its release may implicate the proprietary interests of CHM. Accordingly, you state that you have notified CHM of the requests and of its 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from CHM. We have considered the submitted comments and reviewed the submitted information.

CHM raises section 552.110 of the Government Code for portions of the submitted information. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial 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." *See* Gov't Code § 552.110(a)-(b).

Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (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).

CHM asserts that its client and former client information on pages 3-16 through 3-27 of the submitted proposal, as well as the reference letters in Appendix B, constitute commercial information, the release of which would cause CHM substantial competitive injury. Upon review, we find that CHM has established that its client and former client identifying information on pages 3-16 through 3-27 of the submitted proposal, as well as the reference letters in Appendix B constitute commercial information, the release of which would cause CHM substantial competitive injury. Therefore, the county must withhold CHM's client information on pages 3-16 through 3-27 of the submitted proposal, as well as its letters of reference in Appendix B under section 552.110(b) of the Government Code.

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."¹ 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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *Id.* The county must, therefore, withhold the insurance policy numbers in Appendix D under section 552.136 of the Government Code.²

In summary; 1) the county must withhold CHM's client and former client information on pages 3-16 through 3-27, as well as the reference letters in Appendix B pursuant to section 552.110(b) of the Government Code; 2) the county must withhold the insurance policy numbers in Appendix D of the submitted proposal pursuant to section 552.136 of the Government Code. The remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We 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 insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#384385

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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