



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 7, 2010

Mr. Humberto F. Aguilera
Escamilla, Poneck & Cruz, LLP
P.O. Box 200
San Antonio, Texas 78291

OR2010-15340

Dear Mr. Aguilera:

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# 396520.

The Eagle Pass Independent School District (the "district"), which you represent, received requests from two requestors for information relating to Request for Proposals ("RFP") No. 100632TPARSLP, including the original RFP, a contract with a named individual, all proposals received, consultants' findings and recommendations, and other specified records. You state that some of the requested information either has been or will be released. You take no position on the public availability of the submitted information. You believe, however, that the submitted information may implicate the proprietary interests of third parties.¹ You inform us that the third parties concerned were notified of these requests for information and of their right to submit arguments to this office as to why the submitted information should not be released.² We have reviewed the information you submitted.

¹You inform us that the third parties concerned are Aetna Life Insurance Company; Blue Cross and Blue Shield of Texas; Entrust, Inc.; Envision Pharmaceutical Services, Inc.; FMH Core Source; Global Benefit Services; Group & Pension Administrators, Inc.; Group Resources of Texas, LLC; HealthFirst TPA; HealthSmart Benefit Solutions, Inc.; Humana Insurance Company and Humana Dental Insurance; Meritain Health, Inc.; Mutual Assurance Administrators, Inc.; Principal Life Insurance Company; Stop Loss Insurance Services, Inc.; UMR; and WEB-TPA Employer Services, LLC.

²See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any of the third parties you notified. Thus, because there has been no demonstration that any of the information at issue is proprietary for the purposes of the Act, none of the submitted information may be withheld on the basis of any proprietary interest that any of the third parties may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note that the submitted information includes account, insurance group, and insurance policy numbers. Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], 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."³ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined that an insurance policy number is an access device for the purposes of section 552.136. The district must withhold the account numbers, insurance group numbers, and insurance policy numbers we have marked under section 552.136 of the Government Code.⁴

We also note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1978); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials 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.

In summary, the marked account, insurance group and insurance policy numbers must be withheld under section 552.136 of the Government Code. The rest of the submitted information must be released, but any copyrighted information may only be released in compliance with copyright law.

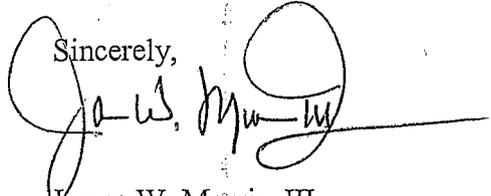
³This office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

⁴We note that 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 insurance policy number under section 552.136, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 396520

Enc: Submitted documents

c: Requestors
(w/o enclosures)

Ms. Amy Andreana
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(w/o enclosures)

Mr. Hector Licon and Mr. Kory Aoyama
Blue Cross and Blue Shield of Texas
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Mr. David L. Jacobson
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Mr. Barry I. Katz
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Mr. Michael J. McCabe Jr.
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