



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Mary Ann Slavin
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-17564

Dear Ms. Slavin:

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# 400801 (DSHS File No. 107929-2011).

The Texas Department of State Health Services (the "department") received a request for information relating to the electronic vaccine inventory, which you inform us pertains to request for offers number 53700-10-0000073827 for the Pharmacy and Emergency Preparedness Asset Management System. You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the remaining submitted information may implicate the proprietary interests of Upp Technology, Inc. ("Upp"). Accordingly, you state, and provides documentation showing, you notified Upp of the request for information 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) (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 reviewed the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-14897 (2010). In that ruling, we determined, in part, the department must release Upp's information. Therefore, to the extent the responsive information is encompassed by our previous ruling, and as we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must rely on that ruling as a previous determination and release the information at issue in accordance with Open Records Letter No. 2010-14897. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was

addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled upon, we will consider any arguments against disclosure.

Next, we note 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Upp has not submitted any comments to this office explaining how release of the information at issue would affect its proprietary interests. Accordingly, none of the submitted information may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude the department may not withhold any portion of the remaining information on the basis of any proprietary interest Upp may have in the information.

In summary, to the extent the information at issue is encompassed by our previous ruling, the department must continue to rely on Open Records Letter No. 2010-14897 and release the information at issue in accordance with that ruling. The department must release the remaining information.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 400801

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Josh Vierling
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Downers Grove, Illinois 60515
(w/o enclosures)