



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2011

Mr. James Downes
Assistant County Attorney
Harris County Hospital District
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2011-00577

Dear Mr. Downes:

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# 405656 (CA File No. 10HSP1224).

The Harris County Purchasing Agent (the "county") received a request for the county's current contract with Rx.com Partners, L.P. ("Rx.com") and Rx.com's most recent proposal submitted for Job No. 10/0309. Although you state the county takes no position with respect to the public availability of the submitted contract, you state its release may implicate Rx.com's proprietary interests. Accordingly, you state, and provide documentation showing, the county notified Rx.com of the request and of the company's 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 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 Rx.com. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted only the requested contract. To the extent information responsive to the request for Rx.com's proposal related to Job No. 10/0309 existed on the date the county received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See Gov't Code* §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Rx.com claims specified portions of its submitted contract are excepted under section 552.110(b) of the Government Code, which protects "[c]ommercial or financial

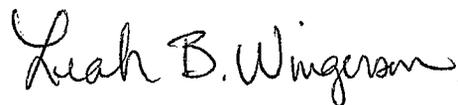
information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999).

Rx.com seeks to withhold certain terms and pricing information in its submitted contract. We note, however, the pricing information of a company contracting with a governmental body is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (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). Consequently, none of the contract information Rx.com seeks to withhold may be withheld under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been claimed, the submitted contract 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 405656

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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