



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2011

Ms. L. Renee Lowe
Assistant County Attorney
Harris County
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2011-06396

Dear Ms. Lowe:

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# 416892 (C.A. File No. 10HSP1559).

The Harris County Hospital District (the "district") received a request for the contract for professional services pertaining to the Epic EHR system and all proposals submitted in relation to this contract.¹ Although you indicate the district takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of 22nd Century Technologies, Inc.; Adams Harris, Inc.; Computer Task Group, Inc.; First Choice Products & Services; Health Data Specialists, L.L.C.; Idea Integration Corporation; Innovative Consulting Group, L.L.C. ("ICG"); International Business Machines Corporation ("IBM"); maxIT Healthcare, L.L.C.; Nimble Services, Inc.; ObjectWin Technology, Inc.; PricewaterhouseCoopers, L.L.P.; and SynaptiCore, L.L.C. Accordingly, you notified these companies of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See*

¹You state the district sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

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 ICG and IBM. We have considered the submitted arguments and reviewed the submitted information.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in this information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Consequently, the district may not withhold any of the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

IBM asserts its customer agreement with the district is marked confidential. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

IBM specifically asserts its customer agreement with the district and some of its customer references are excepted under section 552.110(b). ICG objects to the release of its proposal based on an assertion its release could be damaging to its future business sales. Accordingly, we understand ICG to assert its proposal is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) 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, that substantial competitive injury would likely result from release of the information at

issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

IBM argues release of some of its customer references and its entire customer agreement would cause it substantial competitive harm. Upon review, we find IBM has established that release of some of its customer information would cause it substantial competitive injury. Therefore, the district must withhold the information we marked in IBM's proposal under section 552.110(b). However, IBM has made only conclusory allegations that release of its remaining information at issue would result in substantial damage to its competitive position. We note 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); ORD 541 at 8 (public has interest in knowing terms of contract with state agency). Consequently, we find IBM failed to demonstrate substantial competitive injury would result from the release of its remaining information. ICG generally states release of its proposal would harm its competitive position. However, ICG has not provided any arguments in support of its objection to disclosure. Upon review, we find ICG failed to provide specific factual evidence demonstrating that release of any of its proposal would result in substantial competitive harm to ICG. *See* ORD 661 (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). Thus, ICG failed to demonstrate substantial competitive injury would result from the release of any of its information. Accordingly, the district may not withhold any of the remaining information pursuant to section 552.110(b).

Next, we note section 552.130 of the Government Code may be applicable to a portion of the remaining information.² Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(2). We note section 552.130 does not apply to out-of-state motor vehicle record information. *Id.* We are unable to determine whether the vehicle identification number we marked relates to a motor vehicle title or registration that was issued by an agency of this state. Accordingly, we must rule conditionally. To the extent the marked vehicle identification number relates to a motor vehicle title or registration that was issued by an agency of this state, the district must withhold it pursuant to section 552.130. If the marked vehicle identification number does not relate to a motor vehicle title or registration issued by an agency of this state, this information may not be withheld under section 552.130.

We note the remaining information contains insurance policy numbers. Section 552.136 of the Government Code provides:

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) In this section, "access device" means 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:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Id. § 552.136. We conclude the insurance policy numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the marked information under section 552.136 of the Government Code.³

We note some of the information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person 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.

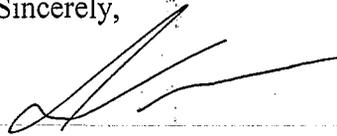
In summary, the district must withhold the information we marked under section 552.110(b) of the Government Code. To the extent the marked vehicle identification number relates to a motor vehicle title or registration that was issued by an agency of this state, the district must withhold it pursuant to section 552.130 of the Government Code. The district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright may only be released in accordance with copyright law.

³We note this office 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID#

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)