



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2011

Mr. Kyle Munson  
Chief Financial Officer  
Metrocare Services  
1380 River Bend Drive  
Dallas, Texas 75247

OR2011-11810

Dear Mr. Munson:

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# 427116.

Dallas County MHMR d/b/a Metrocare Services ("Metrocare") received a request for a specified contract. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Value Options of Texas, Inc. ("Value Options"). Accordingly, you have notified Value Options of the request and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address Metrocare's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See Gov't Code § 552.301(b)*. You state that Metrocare received the present request for information on May 24, 2011. However, you did not request a decision from this office until June 9, 2011. Consequently, Metrocare failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.104 of the Government Code as an exception to disclosure of the responsive information, this is a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.104 does not constitute a compelling reason to withhold information for purposes of section 552.302. Accordingly, Metrocare may not withhold any of the responsive information under section 552.104 of the Government Code. However, because third party interests can provide a compelling reason to withhold information, we will consider whether any of the responsive information may be excepted under the Act.

Although Metrocare argues that the responsive information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address Metrocare's argument under section 552.110. We note that 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, this office has not received comments from Value Options explaining why its submitted information should not be released. Therefore, we have no basis to conclude that Value Options has a protected proprietary interest in the responsive 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. Accordingly, Metrocare may not withhold any portion of the submitted information based upon the proprietary interests of Value Options. As no exceptions to disclosure have been raised, the submitted information 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](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/dls

Ref: ID# 427116

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Value Options of Texas, Inc.  
c/o Mr. Kyle Munson  
Chief Financial Officer  
Metrocare Services  
1380 River Bend Drive  
Dallas, Texas 75247  
(Third party w/o enclosures)