



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2011

Ms. Leni Kirkman
Vice President
Corporate Communications & Marketing
University Health System
4502 Medical Drive
San Antonio, Texas 78229

OR2011-11998

Dear Ms. Kirkman:

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# 427444.

The Bexar County Hospital District d/b/a University Health System (the "system") received a request for information pertaining to a specified request for proposals concerning home health services. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of The Medical Team, Inc. (the "Medical Team"). Accordingly, you state you notified the Medical Team 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.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from the Medical Team. We, thus, have no basis for concluding that any

portion of the submitted information constitutes proprietary information of the Medical Team. *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, the system may not withhold any of the submitted information based on the proprietary interests of the Medical Team.

We note some of the submitted information is subject to common-law privacy.¹ Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the remaining information contains an insurance policy number. Section 552.136(b) of the Government Code states 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.” Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the system must withhold the insurance policy number we have marked pursuant to section 552.136 of the Government Code.²

In summary, the system must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy, and (2) section 552.136 of the Government Code. The remaining information must be released.

¹Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that Open Records Decision No. 684 (2009) was issued by this office as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bs

Ref: ID# 427444

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Barbara Singleton
The Medical Team, Inc.
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San Antonio, Texas 78216
(w/o enclosures)