



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

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

OR2011-14172

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# 431590 (CA File No. 11HSP0769).

The Harris County Purchasing Agent (the "county") received a request for all proposals submitted in response to a request for proposals for eligibility screening.¹ You state you have redacted insurance policy numbers from the responsive proposals under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You represent that some interested third parties had no objection to release of their information; therefore

¹You state the county sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note the requestor excluded from the request the proposal submitted by his company, Siemens Medical Solutions USA, Inc.

²Open Records Decision No. 684 is 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. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

you state the county will release some of the requested information to the requestor. Although the county takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, the county notified the companies of their right to submit arguments to this office as to why the submitted information should not be released.³ *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 reviewed the submitted information.

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 the third parties whose information is at issue explaining why each third party's submitted information should not be released. Therefore, we have no basis to conclude that these third parties have a protected proprietary interest in the submitted 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, the county may not withhold any portion of the submitted information based upon the proprietary interests of the third parties whose information is at issue.

We note some of the submitted information may 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. Accordingly, the county must release the submitted information, but any information protected by copyright must be released in accordance with copyright law.

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.

³The companies notified pursuant to section 552.305 are the following: Passport Health Communications, Inc.; Emdeon, Inc.; SearchAmerica, a part of Experian; and MedeAnalytics, Inc.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 431590

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Brendan Deakin
Vice President of Sales
SearchAmerica, a part of Experian
6450 Wedgewood Road
Maple Grove, Minnesota 55311
(w/o enclosures)

Mr. Jeff Drake
Executive Vice President - Sales & Marketing
Passport Health Communications, Inc.
720 Cool Springs Boulevard, Suite 200
Franklin, Tennessee 37067
(w/o enclosures)

Mr. Stephen E. Leach
Chief Financial Officer
MedeAnalytics, Inc.
5858 Horton Street, Suite 475
Emeryville, California 94608
(w/o enclosures)

Mr. Stephen Druzich
Emdeon Account Executive
Emdeon, Inc.
3055 Lebanon Pike, Suite 1000
Nashville, Tennessee 37214
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