



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2012

Ms. Michelle Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2012-06480

Dear Ms. Rangel:

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# 453170.

The Fort Bend County Judge's Office (the "county") received a request for studies regarding the consideration of the county employee health and wellness center (the "center"); copies of the center's final operation plan, agreements, contracts, memoranda of understanding or other reports between the county and Concentra Health Services, Inc. ("Concentra"); the annual budget for the center; and any promotional material or incentive programs. 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 Concentra. Accordingly, you state and provide documentation showing, you notified Concentra 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 to disclosure under the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted the requested studies, operation plan, budget, and promotional materials for our review. To the extent such information existed when the county received the request for information, we assume the county has released it. If the

county has not released such information, it must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Concentra. Thus, we have no basis to conclude Concentra has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 the 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 of the information at issue on the basis of any proprietary interest Concentra may have in the information.

We note a portion of the submitted information is subject to section 552.136 of the Government Code, which provides in part 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.”<sup>1</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the submitted 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 county must withhold the information we have marked under section 552.136 of the Government Code. The county must release the remaining

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information; however, any information protected by copyright may only 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.

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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 453170

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John Battey  
Concentra Health Services  
5080 Spectrum Drive, #1200W  
Addison, Texas 75001  
(w/o enclosures)