



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2012

Ms. Kerri L. Butcher
Interim Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2012-09572

Dear Ms. Butcher:

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# 456843.

The Capital Metropolitan Transportation Authority (the "authority") received a request for four categories of information pertaining to the authority's "Child Care & Early Learning Center" (the "center"): (1) information showing the original plan, conception, and founding of the center, including e-mails, memos, letters, and proposals; (2) records showing the total cost of construction and operation of the center; (3) information pertaining to all employees of the center, including each employee's name, job title, salary, start date, and work schedule; and (4) employee files for all employees of the center, including employment histories, accommodations, qualifications, policy violations, and disciplinary actions. You state the authority has released some information responsive to items one and two of the request. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the authority notified Bright Horizons Family Solutions ("Bright Horizons"), Children's Choice Learning Centers ("CCLC"), Knowledge Learning Corporation ("KLC"), and Texas State Childcare Co-op ("TSCC") of the request for information and of their right to submit arguments stating why their information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 applicability of exception in certain circumstances). We have received comments from Bright Horizons. We have reviewed the submitted information and the submitted arguments.

Initially, we note the authority asked the requestor for clarification of items one and two of the request. *See* Gov't Code § 552.222 (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). You have not informed us whether the requestor has responded to this request for clarification. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). In this case, as you have submitted information for our review and raised an exception to disclosure for this information, we consider the authority to have made a good-faith effort to identify the information that is responsive to items one and two of the request, and we will address the applicability of the claimed exception to the submitted information.

Next, we note you have not submitted any information responsive to items three and four of the request for information, which pertain to center employees. Thus, to the extent such information existed and was maintained by the authority on the date the authority received the request for information, we presume the authority has released it. If not, the authority 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 that no exceptions apply to the requested information, it must release the information as soon as possible).

We also note the submitted information contains a resolution of the authority's board of directors, which you seek to withhold under section 552.104 of the Government Code and portions of which Bright Horizons seeks to withhold under section 552.110 of the Government Code. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). A resolution is analogous to an ordinance. Accordingly, the resolution must be released.

Next, 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, this office has not received comments from CCLC, KLC, or TSCC explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate the interests of these third parties. *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, we conclude that the authority may not withhold any of the submitted information on the basis of any interest CCLC, KLC, or TSCC may have in the information.

Section 552.104 of the Government Code exempts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). Although you generally assert section 552.104, you provide no specific arguments to support this exception. Thus, you have failed to demonstrate the potential harm to the authority in a particular competitive situation. Accordingly, the authority may not withhold any of the submitted information under section 552.104 of the Government Code.

Bright Horizons submits arguments against disclosure of its information 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.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Bright Horizons contends portions of its information, including its pricing information, client information, start-up costs, insurance rates, staffing salaries and patterns, and budgetary information, are commercial or financial information, release of which would cause substantial competitive harm to Bright Horizons. Upon review, we conclude Bright Horizons has established the release of its client information, which we have marked, would cause it substantial competitive injury. Accordingly, the authority must withhold the information we have marked under section 552.110(b). However, we find Bright Horizons has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We note the pricing information of winning bidders of a government contract, such as Bright Horizons, is generally not excepted under section 552.110(b). Open Records

Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see* ORD 319 at 3. *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* ORD 514. We therefore conclude that the authority may not withhold any of the remaining information under section 552.110(b) 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 authority must withhold the information we have marked under section 552.110(b) of the Government Code. The authority must release the remaining 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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 456843

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Antonette S. Fernandez
Associate General Counsel
Bright Horizons Family Solutions
200 Talcott Avenue South
Watertown, Massachusetts 02472
(w/o enclosures)

Ms. Lisabeth A. Sarin
Director
Knowledge Learning Corporation
650 North East Holladay Street, Suite 1400
Portland, Oregon 97232
(w/o enclosures)

Ms. Pamela Taylor
Vice President of New Center Development
Children's Choice Learning Centers
704 Central Parkway East, Suite 1208
Plano, Texas 75074
(w/o enclosures)

Ms. Nacole Thompson
Program Director, Founder
Texas State Childcare Co-op
P.O. Box 1124
Cedar Park, Texas 78630
(w/o enclosures)