



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2012-11931

Dear Mr. Smith:

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# 460930.

The Texas Health and Human Services Commission (the "commission") received a request for two specified proposals for RFP 529-12-0015 for Disproportionate Share Hospital Audits and for any follow-up questions and clarifications. You state the commission is releasing some information to the requestor. Although the commission takes no position as to the public availability of the submitted information, you state that the proprietary interests of two third parties might be implicated. Accordingly, you provided notice of the request to Myers and Stauffer, L.C. ("Myers") and PHBV Partners, L.L.P. ("PHBV") and notified them of their right to submit arguments to this office explaining 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); *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 applicability of exception 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) 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, we have not received comments from Myers

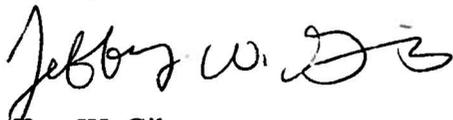
or PHBV explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude that either Myers or PHBV has any protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5–6 (1999) (to prevent 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 (1990). Consequently, the commission may not withhold any of the submitted information on the basis of any proprietary interest Myers or PHBV may have in the information.

We note that 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). However, 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. As you raise no exceptions to disclosure, the submitted information must be released, but any information that is 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 460930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. James D. Erickson
Myers and Stauffer, L.C.
11440 Tomahawk Creek Parkway
Leawood, Kansas 66211
(w/o enclosures)

Mr. Frank Vito
PHBV Partners, L.L.P.
11044 Research Boulevard
Austin, Texas 78759
(w/o enclosures)