



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2012

Ms. Sarah Tuthill  
Assistant General Counsel  
Texas Medical Board  
P.O. Box 2018  
Austin, Texas 78768-2018

OR2012-14790

Dear Ms. Tuthill:

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# 465547.

The Texas Medical Board (the "board") received a request for the bid submitted by Fortes Laboratories ("Fortes") for RFP 503-12-06. You state some of the requested information has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state the requested information may implicate the proprietary interests of Fortes. Accordingly, you inform us you notified Fortes of the request and of the company's right to submit comments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that 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 considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, a portion of the submitted information, which we have marked, is not responsive to the instant request because it was specifically excluded by the requestor. This ruling does not address the public availability of non-responsive information, and the board is not required to release non-responsive information in response to this request.

You argue the submitted proposal is excepted from disclosure under section 552.110 of the Government Code. We note, however, section 552.110 is designed to protect the interests of third parties, such as Fortes, not the interests of a governmental body. Thus, we will not consider the board's arguments under section 552.110, and the submitted proposal may be withheld under section 552.110 based only on arguments from Fortes. 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 Fortes explaining why the submitted information should not be released. Therefore, we have no basis to conclude Fortes has protected proprietary interests in the 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. Consequently, the board may not withhold the submitted proposal on the basis of any proprietary interests Fortes may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 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 established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure were raised, the remaining information must be released.

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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).

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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/eb

Ref: ID# 465547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)