



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-16964

Dear Ms. Pemberton:

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# 468969 (City ID# W008697).

The City of Killeen (the "city") received a request for the top three proposals submitted in response to a specified request for proposals, a list of bidders, prices submitted, and evaluation scores. You state some information will be released. Although the city takes no position regarding whether the submitted information is excepted from disclosure, you state release of the requested information may implicate the proprietary interests of Ceridian Corporation, Deer Oaks EAP Services, MHNet Behavioral Health ("MHNet"), and The Wellness Corporation. Accordingly, you provide documentation showing you have notified these third parties of the request and their right to submit arguments to this office. *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 in the Act in certain circumstances). We have received comments from MHNet. We have considered the submitted arguments and reviewed the submitted information.

We first note MHNet seeks to withhold information that was not submitted by the city to this office for our review. Because such information was not submitted by the governmental body, this ruling does not address that information or MHNet's arguments and is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because no exceptions are raised against disclosure of MHNet's information, it must be released to the requestor.

We next note 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 id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the third parties except MHNet. Thus, we have no basis to conclude any of the remaining third parties have 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 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 city may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in the information. As no exceptions to disclosure have been raised for the remaining information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 468969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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