



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2012

Mr. Jason M. Rammel  
Counsel for the City of Hutto  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2012-17809

Dear Mr. Rammel:

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# 470272.

The City of Hutto (the "city"), which you represent, received a request for the top three proposals for RFP 12-06 for EAP services, with the exception of the requestor's company's proposal, and a listing of all bidders, the prices submitted, and criteria scores for RFP 12-06. You state some of the information has been released. Although you take no position with respect to the public availability of the submitted information, you state release of the submitted information may implicate the proprietary interests of The Lincoln National Life Insurance Company ("Lincoln"), TML Intergovernmental Employee Benefits Pool ("TML"), and MHNet Behavioral Health ("MHNet"). Accordingly, you notified Lincoln, TML, and MHNet of the request and of each company's 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the requested proposals. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

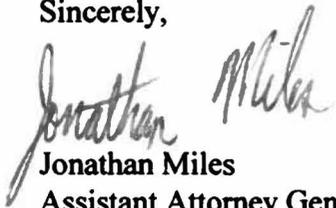
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Lincoln, TML, or MHNet. Thus, Lincoln, TML, and MHNet have not demonstrated they 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 the responsive information on the basis of any proprietary interests Lincoln, TML, or MHNet may have in the information.

We note some of the information being released is 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). 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. Thus, as no exceptions to disclosure are raised, the responsive information must be released, but 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 470272

Enc. Submitted documents

---

c: Requestor  
(w/o enclosures)

Mr Dan Harlow  
The Lincoln National Life Insurance Company  
4975 Preston Park Boulevard, #510W  
Plano, Texas 75056  
(w/o enclosures)

Ms. Susan Smith  
Executive Director  
TML Intergovernmental Employee Benefits Pool  
1821 Rutherford Lane, Suite #300  
Austin, Texas 78754  
(w/o enclosures)

Mr. Marc Blevens  
MHNet Behavioral Health  
9606 North Mopac, Suite 600  
Austin, Texas 78759  
(w/o enclosures)