



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

Ms. Connie Crawford
Assistant County Attorney
University Medical Center of El Paso
4815 Alameda Avenue, Eighth Floor, Suite B
El Paso, Texas 79905

OR2012-19189

Dear Ms. Crawford:

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# 472505 (Ref. No. HO-12-287).

The El Paso County Hospital District d/b/a University Medical Center of El Paso (the "district") received a request for information pertaining to request for proposals number 852-12/11-001. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Avatar International, L.L.C. ("Avatar"), The Jackson Group, Inc. ("Jackson"), Market Dimensions ("Market"), J.L. Morgan & Associates, Inc. ("Morgan"), NRC Picker ("NRC"), and Press Ganey Associates, Inc. ("Press Ganey"). Accordingly, you state, and provide documentation showing, you notified Avatar, Jackson, Market, Morgan, NRC, and Press Ganey of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *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 Avatar, NRC, and Press Ganey.¹ We have reviewed the submitted information and the submitted arguments.

We note most of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-11011 (2012) and 2012-16750 (2012). In Open Records Letter No. 2012-11011, we determined, in part, the district must release the information pertaining to Jackson, Market, and Morgan. We also determined the district must withhold the information we marked under section 552.110 in NRC's information and release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. In Open Records Letter No. 2012-16750, we determined, in part, the district must release the information pertaining to Press Ganey. We also determined the district must withhold the information we marked under section 552.110 of the Government Code in Avatar's information and release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.² With respect to the information pertaining to Avatar, Jackson, Market, Morgan, NRC, and Press Ganey that was previously submitted to and ruled on by this office, we have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the district must rely on Open Records Letter Nos. 2012-11011 and 2012-16750 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note you have submitted information that was not encompassed by the prior rulings.

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 Jackson, Market, and Morgan. Thus, Jackson, Market, and Morgan have failed to demonstrate they have a protected proprietary interest in any of the remaining 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

¹We note although Avatar raises section 552.101 of the Government Code in conjunction with section 552.110 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address Avatar's argument under section 552.101.

²We note HealthStream's information is not at issue in the current ruling. We further note Avatar's information was not at issue in Open Records Decision No. 2012-11011 and NRC's information was not at issue in Open Records Decision No. 2012-16750.

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. Therefore, the district may not withhold the remaining information on the basis of any proprietary interests Jackson, Market, and Morgan may have in the information. In addition, we note Avatar, NRC, and Press Ganey have not raised any arguments against disclosure of the remaining information. Accordingly, as no exceptions to disclosure have been raised for the remaining information, the remaining information must be released.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 472505

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robert W. Kantner
Counsel for Avatar International LLC
2727 North Harwood Street
Dallas, Texas 75201-1515
(w/o enclosures)

Mr. Manuj Lal
VP, Legal Affairs
Press Ganey Associates, Inc.
404 Columbia Place
South Bend, Indiana 46601
(w/o enclosures)

Mr. Paul M. Schudel
Counsel for National Research Coporation
Woods & Aitken, L.L.P.
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508-2578
(w/o enclosures)

Mr. Asir Khan
Market Dimensions
40 Elington Avenue East, Suite 701
Toronto, Ontario M4P 3A2
(w/o enclosures)

Ms. Susan Beard
J.L. Morgan & Associates, Inc.
22 Olmsted Street
Birmingham, Alabama 35242
(w/o enclosures)

Ms. Libby Frei
The Jackson Group Inc.
219 1st Aveune, Southwest
Hickory, North Carolina 28602
(w/o enclosures)