



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2013

Ms. Lisa Ayers
Paralegal
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2013-04957

Dear Ms. Ayers:

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# 482668.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for proposals submitted and awarded in response to Request for Proposal MS-2569, Clinical Coding Services. You state you have released some of the responsive information to the requestor. Although you take no position with respect to the public availability of the remaining requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified COMFORCE Coding Services ("COMFORCE"), Cymetrix Corporation ("Cymetrix"), Kforce Healthcare, Inc. ("Kforce"), and M*Modal Services, Ltd. ("M*Modal") of the request and 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 received arguments from Cymetrix. Thus, we have considered its arguments and 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 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 the remaining third parties. Thus, COMFORCE,

Kforce, and M*Modal have failed to demonstrate 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 district may not withhold the submitted information on the basis of any proprietary interests COMFORCE, Kforce, and M*Modal may have in the information.

Cymetrix states the information it has indicated by red strikethrough is proprietary information that should not be disclosed. However, information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672* (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary. Cymetrix has raised no exceptions to disclosure for the information at issue. Accordingly, the submitted information must be released in its entirety.

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# 482668

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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