



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2013

Ms. Leticia Brysch
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2013-05647

Dear Ms. Brysch:

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# 483439 (PIR# 634).

The City of Baytown (the "city") received a request for "the proposals submitted in response to the Employee Health Clinic RFP 1206-03 . . . and the evaluation form used to compare the bids[.]" You indicate release of the requested information may implicate the interests of six third parties.¹ Accordingly, the city notified the third parties of the request for information and of each company's right to submit arguments stating why its information should not be released.² *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city did not submit any information pertaining to the requested evaluation form. To the extent such information existed on the date the city received the request, we presume you have released it. If not, you must do so at this time. *See* Gov't

¹Although you state the city "asserts that the information requested may fall within" section 552.153 of the Government Code, you further state the city "will defer the comments for the exception . . . to the [companies whose information is requested]."

²The parties the city notified pursuant to section 552.305 are the following: CareACT; CareHere, L.L.C.; City Clinic, Inc.; Concentra Health Services, Inc.; H2U, Health to You; and Marathon Health.

Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

We next note 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, no third party has submitted comments to this office explaining why its submitted information should not be released. Therefore, we have no basis to conclude that any third party has a protected proprietary interest in the submitted 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. Thus, the city may not withhold any portion of the submitted information based upon the proprietary interests of a third party.

We note a portion of the submitted information is subject to section 552.136 of the Government Code.³ Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code.

Finally, we note some of the remaining information appears to be 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). 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.

In summary, the city must withhold the information we have marked under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 483439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

CareACT
Suite 191
4500 South 129th Avenue
Tulsa, Oklahoma 74134-5891
(w/o enclosures)

Mr. Bernie Livers
Vice President of Sales
CareHere, L.L.C.
5141 Virginia Way, Suite 350
Brentwood, Tennessee 37027
(w/o enclosures)

Mr. John Battey
Concentra Health Services, Inc.
5080 Spectrum Drive, #1200W
Addison, Texas 75001
(w/o enclosures)

Mr. Ben Cook
Regional Vice President
H2U, Health to You
3322 West End Avenue, Suite 400
Nashville, Tennessee 37203
(w/o enclosures)

Mr. Jerry Ford
CEO
Marathon Health
20 Winooski Falls Way, Suite 400
Winooski, Vermont 05404
(w/o enclosures)

Dr. Fariborz A. Nazari-Adli
City Clinic, Inc.
4308 Garth Road
Addison, Texas 77521
(w/o enclosures)