



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2013

Mr. J. Scott Wilson
In-House Counsel
TML Intergovernmental Employee Benefits Pool
1821 Rutherford Lane, Suite 300
Austin, Texas 78754-5151

OR2013-12992

Dear Mr. Wilson:

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# 494577.

The Public Employee Benefits Alliance ("PEBA") received a request for a specified proposal, a listing of bidders, pricing information, and evaluation criteria scores pertaining to a specified request for proposals.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of third parties. Accordingly, you state that PEBA notified ComPsych Corporation ("ComPsych"); Deer Oaks EAP Services, LLC; Humana Insurance Company ("Humana"); and Interface EAP of the request for information and of their right to submit arguments stating 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); 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 comments from ComPsych and Humana. We have considered the submitted arguments and reviewed the submitted information.

Initially, we 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

¹We note PEBA sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

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, only ComPsych has submitted comments to this office explaining why their information should not be released. Therefore, we have no basis to conclude the remaining third parties have 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. Accordingly, PEBA may not withhold any portion of the information it submitted for our review based upon the proprietary interests of the remaining third parties.

Next, we note ComPsych seeks to withhold information PEBA did not submit for our review. This ruling does not address information beyond what PEBA has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information PEBA submitted as responsive to the request for information. *See id.*

PEBA generally asserts that the submitted information is excepted under section 552.101 of the Government Code. However, you have not directed our attention to, and we are not aware of, any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, we conclude that PEBA may not withhold any of the submitted information under section 552.101.

PEBA raises section 552.110 of the Government Code. We note section 552.110 is designed to protect the interests of third parties not the interests of a governmental body. Thus, we do not address PEBA's claims under section 552.110 of the Government Code.

We note portions of the submitted information are subject to section 552.136 of the Government Code.² Section 552.136 states, "[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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, PEBA must withhold the insurance policy numbers we have marked under section 552.136. As no further exceptions to disclosure are raised, the remaining information must be released.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 494577

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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