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ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2013

Ms. Katheryne MarDock
Assistant General Counsel
Public Information Office - Legal Services
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2013-13781A

Dear Ms. MarDock:

This office issued Open Records Letter No. 2013-13781 (2013) on August 8, 2013. In that ruling we determined Blue Cross Blue Shield of Texas, Inc. ("Blue Cross") had not submitted comments to this office explaining why its information should not be released. Thus, we had no basis to withhold Blue Cross's information and ordered it released. Blue Cross has now submitted comments to this office explaining why its information should not be released. Consequently, this decision serves as the correct ruling and is a substitute for the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID # 503230.

The Houston Independent School District (the "district") received two requests for the proposals submitted in response to RFP 12-04-01.¹ Although you take no position on

¹In his request, the first requestor asserts the district failed to comply with section 552.301 of the Government Code. *See* Gov't Code § 552.301 (prescribing procedures governmental bodies must follow in asking this office to determine whether requested information is excepted from public disclosure). We note although section 552.302 of the Government Code provides information is subject to public release unless there is a compelling reason to withhold the information if a governmental body fails to comply with section 552.301, third party interests can provide a compelling reason to withhold information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Accordingly, as third party interests are at stake, we will consider whether the information must be withheld under the Act.

whether the requested information is excepted from disclosure, you state its release may implicate the proprietary interests of Active Health Management (“Active Health”); Aetna Life Insurance Company (“Aetna”); American Healthways Services, LLC (“Healthways”); Avivia Health; Bank of America Benefit Solutions; Blue Cross; CaremarkPCS Health, LLC (“Caremark”); Carewise Health, Inc.; Cigna Healthcare (“Cigna”); Concentra Health Services, Inc. (“Concentra”); Connect Your Care, LLC (“CYC”); Express Scripts, Inc. (“Express”); Fringe Benefits Management Company; Health Design Plus; Healthyroads and American Specialty Health; Kennedy Benefits Group; MD Live Care; MHealth Inc. (“MHealth”); Navitus Health Solutions, LLC; Nurtur Health, Inc. (“Nurtur”); QuadMed, LLC (“QuadMed”); Redbrick Health (“Redbrick”); StayWell; Top Care Medical; Viverae; WebMD Health Services Group, Inc. (“WebMD”); and Johnson & Johnson Wellness & Prevention. Accordingly, you notified these third parties of the requests and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov’t Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 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 received comments from Active Health, Aetna, Blue Cross, Caremark, Cigna, Concentra, CYC, Express, Healthways, MHealth, Nurtur, QuadMed, Redbrick, and WebMD. We have reviewed the submitted arguments and the submitted information.

We note the proposals submitted by Cigna, Concentra, and QuadMed were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-00341 (2013). In that ruling, we found the district must withhold the information we marked in the proposals submitted by Cigna, Concentra, and QuadMed under sections 552.110(b) and 552.136 of the Government Code, and release the remaining information in accordance with copyright law. With respect to the proposals submitted by Concentra and QuadMed, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the district must rely on Open Records Letter No. 2013-00341 as a previous determination and withhold or release the information pertaining to Concentra and QuadMed in accordance with that ruling. *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).

With respect to Cigna, we found Cigna failed to demonstrate the applicability of sections 552.104 and 552.110 of the Government Code to some of its information. Accordingly, we determined in our previous ruling the district must release some of Cigna’s proposal. Cigna now makes arguments to withhold this information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any

member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Cigna now claims the information we ordered released is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Section 552.104 is a discretionary exception that protects a governmental body's interest and does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Thus, the district may not withhold Cigna's information at issue under section 552.104. However, section 552.110 does make information confidential under the Act. Therefore, with respect to the information Cigna sought to withhold previously, the district must continue to rely on Open Records Letter No. 2013-00341 as a previous determination and withhold or release that information in accordance with the prior ruling; however, because circumstances have changed with respect to the additional information Cigna seeks to withhold under section 552.110, the district may not rely upon the prior ruling as a previous determination for this information, and we will address Cigna's arguments against the release of this information under section 552.110 of the Government Code.

Next, we note Aetna, Express, Mhealth, and Nurtur each seek to withhold information the district did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). We have received correspondence from only Active Health, Aetna, Blue Cross, Caremark, Cigna, Concentra, CYC, Express, Healthways, MHealth, Nurtur, QuadMed, Redbrick, and WebMD. As of the date of this letter, this office has not received comments from any of the remaining third parties explaining why their information should not be released to the requestors. Thus, we have no basis to conclude that the release of any of the submitted information would implicate the interests of the remaining third parties. *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, we conclude the district may not withhold any of the submitted information on the basis of any interest the remaining third parties may have in the information.

Blue Cross states it submitted the information at issue to the district with the expectation that it would not be publicly released. 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.

CYC raises section 552.103 of the Government Code, the litigation exception, for its information. We note section 552.103 protects the interests of governmental bodies, as distinguished from exceptions which are intended to protect the interests of third parties. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103), Open Records Decision No. 522 (1989) (discretionary exceptions in general). As the district does not raise section 552.103, we will not consider CYC’s argument under that exception. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76. Therefore, the district may not withhold any of CYC’s information under section 552.103 of the Government Code.

Nurtur raises section 552.104 of the Government Code for portions of its information. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See Open Records Decision No. 592* at 8 (1991) (purpose of section 552.104 is to protect governmental body’s interest in competitive bidding situation). As the district does not argue section 552.104 is applicable, we will not consider Nurtur’s claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the district may not withhold any of Nurtur’s information under section 552.104 of the Government Code.

CYC raises section 552.110 of the Government Code for its entire proposal. Active Health, Aetna, Blue Cross, Caremark, Cigna, Express, Healthways, MHealth, Nurtur, Redbrick and WebMD argue portions of their information are protected under section 552.110, and CYC alternatively argues portions of its proposal are protected under that exception. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information, the

disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 at 5 (1990). Section 757 provides a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) of the Government Code excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Aetna, Caremark, and CYC also contend portions of their respective information are excepted under section 552.110(b) of the Government Code because release of the information at issue would harm the district’s ability and the ability of other governmental entities to obtain qualified candidates in response to future searches. In advancing this argument, Aetna, Caremark, and CYC appear to rely on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body’s ability to obtain necessary information in future. *National Parks*, 498 F.2d at 765. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration that the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. *See* ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, we will consider only these companies’ interests in their respective information.

As mentioned above, Cigna’s information was the subject of Open Records Letter No. 2013-00341. In the prior ruling, Cigna did not object to the release of the information it now seeks to withhold. Since the issuance of the previous ruling, Cigna has not disputed this office’s conclusions regarding the release of its information, and we presume the district has released the information in accordance with that ruling. In this regard, we find Cigna has not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Cigna substantial harm. *See* Gov’t Code § 552.110;

RESTATEMENT OF TORTS § 757 cmt. b; *see also* ORDs 661, 319 at 2, 306 at 2, 255 at 2. Accordingly, we conclude the district may not withhold the information Cigna now seeks to withhold under section 552.110 of the Government Code.

Active, Aetna, Blue Cross, Caremark, CYC, Express, Healthways, MHealth, Nurtur, and WebMD claim some of their information constitutes commercial information that, if released, would cause the companies substantial competitive harm. Upon review, we conclude Active, Aetna, Blue Cross, Caremark, Express, Healthways, MHealth, Nurtur, and WebMD have established that release of portions of the information at issue would cause the companies substantial competitive injury. Accordingly, the district must withhold the information we have marked under section 552.110(b) of the Government Code.³ We note, however, Aetna has made some of the customer information it seeks to withhold publicly available on its website. Because Aetna has published this information, it has failed to demonstrate release of this information would cause the company substantial competitive harm. Moreover, we find Active, Aetna, Caremark, CYC, Express, Healthways, MHealth, Nurtur, and WebMD have not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their remaining information would cause the companies substantial competitive harm. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, and qualifications and experience), 175 at 4 (1977) (resumes cannot be said to fall within any exception to Act). Furthermore, we note the pricing information of a winning bidder is generally not excepted from disclosure under section 552.110(b). Aetna was the winning bidder for the medical and FSA portions of the project while Caremark won the bid to provide pharmacy services to the district. This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Consequently, the district may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Upon review, we find Redbrick has shown some of its information constitutes trade secrets. Therefore, the district must withhold this information, which we have marked, under

³As our ruling for this information is dispositive, we need not address Nurtur's remaining arguments against disclosure of this information.

section 552.110(a) of the Government Code. As noted above, Aetna has made some of the customer information it seeks to withhold publicly available on its website. Because Aetna has published this information, it has failed to demonstrate this information is a trade secret, and none of it may be withheld under section 552.110(a). Furthermore, we find Active, Aetna, Caremark, CYC, Express, Healthways, Redbrick, MHealth, and Nurtur have failed to demonstrate any of their remaining submitted information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for this information. We further note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” *See* RESTATEMENT OF TORTS § 757 cmt. b; *Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Thus, the district may not withhold any portion of the remaining information under section 552.110(a) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Caremark argues portions of its remaining information fit the definition of a trade secret found in section 1839(3) of title 18 of the United States Code, and indicates this information is therefore confidential under sections 1831 and 1832 of title 18 of the United States Code. *See* 18 U.S.C. §§ 1831, 1832, 1839(3). Section 1839(3) provides in relevant part:

(3) the term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes . . . if -

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public[.]

Id. § 1839(3). Section 1831 provides criminal penalties for the unauthorized disclosure of trade secrets to foreign governments, instrumentalities, or agents. *Id.* § 1831. Section 1832 provides criminal penalties for the unauthorized appropriation of trade secrets related to products produced for or placed in interstate or foreign commerce. *Id.* § 1832. We find Caremark has not demonstrated the information at issue is a trade secret under section 1839(3). Accordingly, we need not determine whether section 1831 or section 1832 applies, and the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code on those bases.

Additionally, Caremark argues portions of its remaining information fit the definition of a trade secret found in section 134A.002(6) of the Civil Practice and Remedies Code of the Texas Uniform Trade Secrets Act (the "TUTSA") as added by the Eighty-third Texas Legislature. Section 134A.002(6) provides:

(6) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Act of April 24, 2013, 83rd Leg., R.S., S.B. 953, ch. 10, 2013 Tex. Sess. Law Serv. 12, 12-13 (Vernon) (to be codified at Civ. Prac. & Rem. Code § 134A.002(6)). We note the legislative history of TUTSA indicates it was enacted to provide a framework for litigating trade secret issues and provide injunctive relief or damages in uniformity with other states. Senate Research Center, Bill Analysis, S.B. 953, 83rd Leg., R.S. (2013) (enrolled version). Section 134A.002(6)'s definition of trade secret expressly applies to chapter 134A only, not the Act, and does not expressly make any information confidential. *See* Act of April 24, 2013, 83rd Leg., R.S., S.B. 953, ch. 10, Tex. Sess. Law Serv. 12, 12-13 (Vernon) (to be codified at Civ. Prac. & Rem. Code § 134A.002(6)); *see also id.* (to be codified at Civ. Prac. & Rem. Code § 134A.007(d)) (TUTSA does not affect disclosure of public information by governmental body under the Act). *See* Open Records Decision Nos. 658 at 4, 478 at 2, 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the district may not withhold Caremark's remaining information under section 552.101 of the Government Code in conjunction with section 134A.002(6) of Texas Civil Practice and Remedies Code.

MHealth argues its remaining information is confidential under section 552.101 of the Government Code in conjunction with section 31.05 of the Penal Code. Section 552.101 also encompasses section 31.05, which provides in pertinent part:

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret; or

(3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

Penal Code § 31.05(b), (c). We note section 31.05 does not expressly make information confidential. As stated above, in order for section 552.101 to apply, a statute must contain language expressly making certain information confidential. *See* ORD 465 at 4-5. Accordingly, the district may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of section 31.05 of the Penal Code.

MHealth also raises common-law privacy for some of its remaining information. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.— Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). We further note the names, addresses, and telephone numbers of members of the public are generally not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find MHealth failed to show any portion of its financial statements or the addresses, telephone numbers, or e-mail addresses of its employees constitute highly intimate or embarrassing information of no legitimate public interest. Accordingly, the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code 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). This office has determined an insurance policy number is an access device for the purposes of section 552.136. *See id.* § 552.136(a). Accordingly, we

find the district must withhold the bank account numbers, routing numbers, and insurance policy numbers we have marked under section 552.136 of the Government Code.

MHealth also seeks to withhold the e-mail addresses of its employees under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address in information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract. *See id.* § 552.137(c). We note the e-mail addresses MHealth seeks to withhold fall under subsection 552.137(c); therefore, the district may not withhold these e-mail addresses under section 552.137 of the Government Code.

MHealth also raises section 552.147 of the Government Code for the social security numbers of its employees. Section 552.147(a) provides “[t]he social security number of a living person is excepted” from required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the district may withhold the social security numbers in MHealth’s remaining information under section 552.147 of the Government Code.

Some of the remaining information may 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 district must rely on Open Records Letter No. 2013-00341 as a previous determination and withhold or release the information at issue in that ruling in accordance with it. The district must withhold the information we have marked under section 552.110 of the Government Code and the information we have marked under section 552.136 of the Government Code. The district may withhold the social security numbers in MHealth’s proposal under section 552.147 of the Government Code. The district must release the remaining information; however, 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 503230

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)

Mr. David R. Doctor
Active Health Management
1333 Broadway, Fourth Floor
New York, New York 10018
(w/o enclosure)

Mr. Luis Doffo
Bank of America Benefit Solutions
150 North College Street
Charlotte, North Carolina 28255
(w/o enclosure)

Mr. Mark R Chulick
Aetna
2777 Stemmons Freeway, #F730
Dallas, Texas 75207
(w/o enclosure)

Mr. Randall K. Justice
Carewise Health, Inc.
9200 Shelbyville Road, Suite 700
Louisville, Kentucky 40222
(w/o enclosure)

Mr. Steve Hastings
Area Vice President
Avivia Health, Suite 740
6133 North River Road
Rosemont, Illinois 60018
(w/o enclosure)

Mr. Jason Britt
For CVS Caremark
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60654-5313
(w/o enclosure)

Ms. Deanna Davis Aldenberg
Cigna
900 Cottage Grove Road
Hartford, Connecticut 06152
(w/o enclosure)

Ms. Penny Hobbs
For Concentra
McGinnis, Lochridge & Kilgore
Suite 2100
600 Congress Avenue
Austin, Texas 78701
(w/o enclosure)

Mr. Reese K. Feuerman
Connect Your Care, LLC
Suite 200
307 International Circle
Hunt Valley, Maryland 21030
(w/o enclosure)

Ms Melissa J. Copeland
For Express Scripts
Schmidt & Copeland, LLC
P.O. Box 11547
Columbia, South Carolina 29211
(w/o enclosure)

Mr. Darryl Beacher
Fringe Benefits Management Co.
3101 Sessions Road
Tallahassee, Florida 32303
(w/o enclosure)

Ms. Ruth Coleman
Health Design Plus
1755 Georgetown Road
Hudson, Ohio 44236
(w/o enclosure)

Ms. Shelley Kennedy
Kennedy Benefits Group
706 Sue Barnett
Houston, Texas 77018
(w/o enclosure)

Mr. Bruce McCandless, III
For MHealth Inc.
Mitchell, Williams, Selig, Gates &
Woodyard, PLLC
106 East Sixth Street, Suite 300
Austin, Texas 78701-3661
(w/o enclosure)

Mr. Sam Testa
Healthyroads and American Specialty
Health
10221 Wateridge Circle
San Diego, California 92121
(w/o enclosure)

Mr. Matthew M. Ray
American Healthways Services
Simon Ray Winikka LLP
2525 McKinnon Street, Suite 540
Dallas, Texas 75201
(w/o enclosure)

Mr. Drew Ben-Aharon
MD Live Care
13630 NW 8th Street, Suite 205
Sunrise, Florida 33325
(w/o enclosure)

Mr. David Guerrero
Navitus Health Solutions
15814 Champion Forest Drive
Spring, Texas 75244
(w/o enclosure)

Mr. Michael Young
Nurtur Health, Inc.
4000 McEwen Road
Dallas, Texas 75244
(w/o enclosure)

Mr. Jorge Moreno
Top Care Medical
300 East John Carpenter
Freeway, #850
Irving, Texas 75062
(w/o enclosure)

Ms. Bree Cush
Viverae
10670 North Central
Expressway, Suite 700
Dallas, Texas 75231
(w/o enclosure)

Mr. Joe Riojas
Redbrick Health
12210 Brothers Purchase Circle
Cypress, Texas 77433
(w/o enclosure)

Ms. Terri A. Kildow
Redbrick Health Corporation
Suite 1000
920 Second Avenue South
Minneapolis, Minnesota 55402
(w/o enclosures)

Ms. Catherine Capeless
Webmd Health Services
111 Eight Avenue
New York, New York 10011
(w/o enclosure)

Mr. Blake Wilkerson
QuadMed
103 Sussex Road
Sussex, Wisconsin 53089-2827
(w/o enclosure)

Mr. Ben Wiegand
Johnson & Johnson Wellness &
Prevention, Inc.
420 Delaware Drive
Fort Washington, Pennsylvania 19034
(w/o enclosure)

Mr. Barry Senterfitt
For Nurtur Health Inc.
Greenberg Taurig
300 West 6th Street, Suite 2050
Austin, Texas 78701
(w/o enclosures)

Ms. Kellie Hand
Staywell Health Management
3000 Ames Crossing Road, #100
St. Paul, Minnesota 55121
(w/o enclosure)

Ms. Catherine Y. Livingston
For Blue Cross and Blue Shield Of
Texas
GreenbergTraurig
300 West 6th Street, Suite 2050
Austin, Texas 78701
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

AUG 04 2015 MYR
203 P M.
At Velva L. Price, District Clerk

CAUSE NO. D-1-GN-13-002866

CAREMARKPCS HEALTH, L.L.C.	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	126th JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff CaremarkPCS Health, L.L.C., ("CaremarkPCS") and Defendant Ken Paxton, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This is an action brought by Plaintiff CaremarkPCS to challenge Letter Ruling OR2013-13781 (the "Ruling"). The Houston Independent School District ("Houston ISD") received a request from Andrew MacRae (the "Requestor") pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552, for certain proposal documents submitted to the Houston ISD. These documents contain information designated by CaremarkPCS as confidential, proprietary, trade secret, and commercial and financial information exempt from disclosure under the PIA ("CaremarkPCS Information"). Houston ISD requested a ruling from the Open Records Division of the Office of the Attorney General ("ORD"). ORD subsequently issued the Ruling, ordering the release of the CaremarkPCS Information. Houston ISD holds the information that has been ordered to be disclosed.

The parties represented to the Court that: (1) pursuant to Tex. Gov't Code § 552.327(2) the Attorney General has determined and represents to the Court that the Requestor has in



writing voluntarily withdrawn his request, (2) in light of this withdrawal the lawsuit is now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1) the parties agree to the dismissal of this cause.

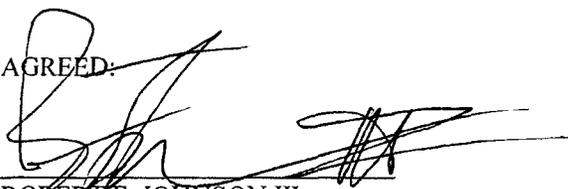
IT IS THEREFORE ORDERED that:

1. Because the request has been withdrawn, no CaremarkPCS Information should be released in reliance on Letter Ruling OR2013-13781. Letter Ruling OR2013-13781 should not be cited for any purpose related to the CaremarkPCS Information as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
2. Within 30 days of the Court signing this Final Judgment, the Office of the Attorney General shall notify Houston ISD in writing of this Final Judgment and shall attach a copy of this Final Judgment to the written notice. In the notice, the Office of the Attorney General shall expressly instruct Houston ISD that pursuant to Tex. Gov't Code § 552.301(g) it shall not rely upon Letter Ruling OR2013-13781 as a prior determination under Tex. Gov't Code § 552.301(f) nor shall it release any CaremarkPCS Information in reliance on said Ruling, and if Houston ISD receives any future requests for the same or similar CaremarkPCS Information it must request a decision from the Office of the Attorney General, which shall review the request without reference to Letter Ruling OR2013-13781.
3. All costs of court are taxed against the parties incurring same.
4. This cause is hereby DISMISSED without prejudice.

SIGNED on August 4th, 2015.

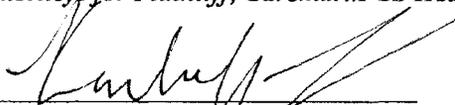
Mueli D. Inari
JUDGE PRESIDING

AGREED:



ROBERT F. JOHNSON III
Gardere Wynne Sewell LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701-2978
Telephone: (512) 542-7127
Facsimile: (512) 542-7327
State Bar No. 10786400

Attorneys for Plaintiff, CaremarkPCS Health, L.L.C.



KIMBERLY L. FUCHS
State Bar # 24044140
Assistant Attorney General
Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 320-0167

Attorney for Defendant, Ken Paxton