



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2013

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2013-21251

Dear Mr. Smith:

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# 508004.

The Texas Health and Human Services Commission (the "commission") received a request for all IBM Enterprise Software agreements entered into by the commission. You state the commission has released most of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of IBM. Accordingly, you state, and provide documentation showing, you notified IBM of the request for information and of its right 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 reviewed the submitted information.

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 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, we have not received comments from IBM explaining why its information should not be released. Therefore, we have no basis to conclude IBM 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. Accordingly, the commission may not withhold any of the information at issue on the basis of any proprietary interest IBM may have in it. As no other exceptions to disclosure have been raised, the submitted 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.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,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 508004

Enc. Submitted documents

c: Requestor
(w/o enclosures)