



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2014

Mr. Robert L. Drinkard  
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.  
701 East Harrison, Suite 100  
Harlingen, Texas 78550

OR2014-18793

Dear Mr. Drinkard:

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# 540414.

The Tropical Texas Behavioral Health Center (the "center"), which you represent, received a request for four categories of information related to the center's request for proposals ("RFP") number VB 2014-09-01 and Ethos Risk Advisors, L.L.C., including contact information for the winning bidder and all proposals submitted in response to the RFP. You state the center released information responsive to categories one through three of the request. Although the center takes no position with respect to the submitted information, you assert its release may implicate the interests of third parties.<sup>1</sup> Accordingly, you inform this office, and provide documentation demonstrating, the center notified twenty-one third parties 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 reviewed the submitted information and the arguments submitted by National Benefit Services, L.L.C.

---

<sup>1</sup>We note the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b).

("NBS"). We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We understand the requestor asserts the center did not meet its procedural obligations under section 552.301 of the Government Code with regard to its request for a ruling. *See id.* § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). As the center does not raise any arguments against disclosure of this information, we need not address the requestor's claim except to note the following: (1) third party interests can provide a compelling reason to withhold information under section 552.302; (2) section 552.136 of the Government Code makes information confidential under the Act and can provide a compelling reason under section 552.302 to withhold information; and (3) the Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only NBS explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate any of the remaining third parties' interests. *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 center may not withhold any of the submitted information on the basis of any interest the remaining third parties may have in the information.

NBS claims some of its information is excepted under section 552.110(b) of the Government Code, which protects "[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). This

exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find NBS has demonstrated release of its pricing information would cause the company substantial competitive harm. Therefore, the center must withhold NBS's pricing information, which we have marked, under section 552.110(b). However, we find NBS has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information would cause the company substantial competitive harm. *See* Open Records Decision Nos. 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. We therefore conclude the center may not withhold any of the remaining information at issue under section 552.110(b).

The remaining documents include information subject to section 552.136 of the Government Code. Section 552.136 provides, in relevant part, "Notwithstanding any other provision of [the Act], 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 determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the center must withhold the submitted insurance policy and group numbers under section 552.136 of the Government Code.

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 center must withhold the information we have marked under section 552.110(b) of the Government Code. The center must withhold the submitted insurance policy and group numbers under section 552.136 of the Government Code. The center 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 540414

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Richard Pina  
Regional Sales Manager  
ALLSTATE  
2800 Jonquil  
McAllen, Texas 78501  
(w/o enclosures)

Mr. Leo Longoria  
Leo Longoria Insurance  
3311 North Ware Road, Suite 1  
McAllen, Texas 78504  
(w/o enclosures)

Mr. Aaron Schramm  
Account Executive  
METLIFE  
Suite 1100, Lockbox 300  
5400 LBJ Freeway  
Dallas, Texas 75240  
(w/o enclosures)

Mr. Alberto Trevino  
Bob Trevino Insurance  
819 North I Road  
Pharr, Texas 78577  
(w/o enclosures)

Mr. Albert Salinas  
Texas Insurance Service Center  
521 South 77 Sunshine Strip  
Harlingen, Texas 78550  
(w/o enclosures)

MGM Benefits Group  
2121 North Glenville Drive  
Richardson, Texas 75082  
(w/o enclosures)

Mr. Omar Carrasco  
Workplace Benefit Advisors  
819 North I Road  
Pharr, Texas 78577  
(w/o enclosures)

Ms. Nadia Saenz  
Newkirk & Newkirk, Inc.  
8101 North Jackson Road  
McAllen, Texas 78501  
(w/o enclosures)

Mr. Roberto Ramirez, Jr.  
Puro Aseguro, Inc.  
514 South I Road, Suite A  
Pharr, Texas 78577  
(w/o enclosures)

Ms. Jenny Cook  
Supervisor, Sales Proposal Team  
Transamerica Employee Benefits  
P.O. Box 8063  
Little Rock, Arkansas 72203  
(w/o enclosures)

Mr. Ruben Garza  
Lone Star Insurance Services  
520 East Nolana Avenue, Suite 110  
McAllen, Texas 78504  
(w/o enclosures)

Mr. Raynard H. Davis  
National Benefit Services, LLC  
8523 South Redwood Road  
West Jordan, Utah 84088  
(w/o enclosures)

Mr. Matt Worsham  
Sales Consultant  
UNUM  
Suite 1400  
2000 West Sam Houston Parkway South  
Houston, Texas 77042  
(w/o enclosures)

Ms. Becky Silva  
Texas Insurance Service Center, Inc.  
521 South 77 Sunshine Strip  
Harlingen, Texas 78550  
(w/o enclosures)

Mr. Stephen Schimmel  
Health Solutions Sales Executive  
South Texas Region  
HUMANA  
8431 Fredericksburg Road, Suite 500  
San Antonio, Texas 78229  
(w/o enclosures)

Mr. Ronnie Guerra  
Holmes Murphy  
c/o HUMANA  
8431 Fredericksburg Road, Suite 500  
San Antonio, Texas 78229  
(w/o enclosures)

Mr. Jeff Everitt  
Jeff Everitt & Associates  
901 South Texas Boulevard  
Weslaco, Texas 78596  
(w/o enclosures)

Ms. Wynona Snyder  
Colonial Life & Accidental  
Insurance Co.  
1021 East Tyler  
Harlingen, Texas 78550  
(w/o enclosures)

Mr. John Harmeling  
Senior Vice President  
American Family Life Assurance Company of Columbus  
1932 Wynnton Road  
Columbus, Georgia 31999  
(w/o enclosures)

Mr. Pierre Newkirk  
Newkirk & Newkirk, Inc.  
3101 North Jackson Road  
McCallen, Texas 78501  
(w/o enclosures)

Mr. Mike Keller  
Vice President of Sales-Southwest  
Colonial Life & Accident Insurance Co.  
4965 Preston Park Boulevard  
Plano, Texas 75093  
(w/o enclosures)