



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 13, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2003-0250

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174922.

The Texas Health and Human Services Commission (the "commission") received a request for the Children's Health Insurance Program's RFP for administrative services and the winning proposal from Birch & Davis Health Management Corporation ("BDHMC"). We note that you have not raised any exceptions to disclosure that may apply to the RFP for administrative services. Therefore, this information must be released. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). You claim that portions of the requested proposal may be excepted from disclosure in accordance with a previous determination issued by this office. Alternatively, you claim that the proposal may be excepted from disclosure under section 552.110 of the Government Code but make no arguments and take no position as to whether the submitted information is so excepted. You inform this office and provide documentation showing that you have notified ACS/BDHMC, the interested third party whose proprietary interests are implicated by the request, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act (the "Act") in certain circumstances). This office has received a response from ACS arguing that some of its information may be withheld pursuant to a previous determination. We have considered all arguments and have reviewed the submitted information.

The requested proposal was the subject of Open Records Letter No. 2000-0541 (2000). In that ruling, this office found that certain strategic and technical information was excepted from disclosure under section 552.110 of the Government Code, and that the remaining portions were required to be released. As there has been no change in the facts, law, or circumstances relating to this information, the commission may rely on our decision in Open Records Letter No. 2000-0541 (2000) as a previous determination in withholding the information that this office ruled was excepted from disclosure. See Open Records Decision No. 673 (2001). However, you state “[i]t is unclear to us whether the cost proposal was identified as part of the excepted information” in Open Records Letter No. 2000-0541. In this regard, we note that ACS has notified this office that it does not object to the release of certain information pertaining to the fee proposal, which you have submitted to this office. Therefore, this information must be released to the requestor. The remaining responsive information must be released or withheld in accordance with Open Records Letter No. 2000-0541.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

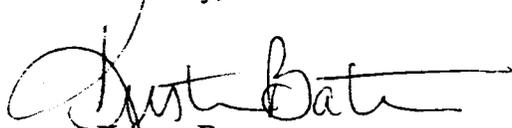
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/sdk

Ref: ID# 174922

Enc. Submitted documents

c: Mr. David M. Ashton
c/o Steve Aragón
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711
(w/o enclosures)

Ms. Debra Glickfeld Bang
Vice President & Senior Corporate Counsel
ACS
5290 Shawnee Road
Alexandria, Virginia 22312
(w/o enclosures)