



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2004

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P. O. Box 1458
Kingsville Texas 78364

OR2004-4451

Dear Ms. Alvarez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202616.

The City of Kingsville (the "city") received a request for the following information:

- (1) Plan Document for the group health insurance program administered through Entrust.
- (2) Administration Agreement between City of Kingsville and Entrust.
- (3) Stop Loss Contract for the Self-Funded employee welfare program.
- (4) Monthly invoices for the period January 1, 2003 – January 1, 2004, showing total administrative fees, claims transaction fees, PPO access fees, Medical Help Line Fees, and any other claims associated expenses that may or may not fall under the aggregate stop-loss.

You take no position and make no arguments regarding the submitted information, but have notified the third party, Entrust, whose proprietary interests may be implicated by the request,

of this request for information pursuant to 552.305 of the Government Code.¹ *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 that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.²

Initially, we note that information responsive to items (1), (2), and (3) of this request is subject to a prior ruling from this office. In Open Records Letter No. 2004-3058 (2004), we concluded that the city must release the submitted information. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the city must rely on our decision in Open Records Letter No. 2004-3058 with respect to the information requested in this instance that was previously ruled upon in that decision.³ *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Next, we note that an interested third party is allowed 10 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, Entrust has not submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that the release of any portion of the submitted information would implicate the proprietary interests of Entrust and therefore conclude that none of the remaining submitted information may be withheld on that basis. *See, e.g.,* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of

¹In your brief to this office dated March 26, 2004, you claim the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. In your brief dated April 12, however, sections 552.101 and 552.104 are no longer claimed. Therefore, you have waived any claim of exception from disclosure under sections 552.101 and 552.104 of the Government Code. Gov't Code §§ 552.301, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body that received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 (1990). Accordingly, the remaining submitted information must be released.

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).

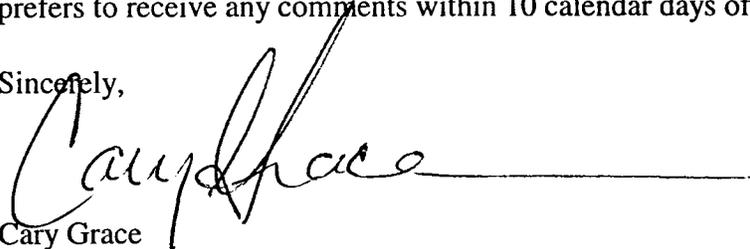
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read 'Cary Grace', is written over a horizontal line. The signature is cursive and somewhat stylized.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/SIS/krl

Ref: ID# 202616

Enc. Submitted documents

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(w/o enclosures)

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(w/o enclosures)