



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2005

Ms. Debra G. Rosenberg
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2005-00297

Dear Ms. Rosenberg:

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# 216588.

The McAllen Independent School District (the "school district"), which you represent, received a request for fourteen categories of information related to administration of the school district's employee health plan, including (1) "[a]ll third party administrator produced reports that address savings and/or billed amounts to allowed amounts," and (2) "[t]he financials of the third party administrator for the years 2001, 2002, and 2003 by month annually." You state that the school district has released information responsive to twelve items of the request. Although you take no position with respect to the submitted information, you claim that it may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, the school district notified the interested third parties, Texas True Choice, Inc. ("True Choice") and TASB Risk Management Services ("TASB"), of the school district's receipt of the request and of their right to submit arguments to us as to why any portion of the submitted information should not be released. *See* Gov't Code §552.305(d); *see also* 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 under the Act in certain circumstances). We have considered arguments received from True Choice and have reviewed the submitted information.

Initially, we note that the submitted information pertains solely to TASB. True Choice seeks to withhold information that the school district has not submitted to this office as responsive

for our review.¹ This ruling does not address the arguments submitted by True Choice pertaining to information that has not been submitted for our review by the school district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body seeking attorney general's opinion under Act must submit copy or representative samples of specific information requested).

We note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, TASB has not submitted to this office any reasons explaining why the requested information relating to it should not be released; therefore, this office has no basis for concluding that it has a proprietary interest in this information. Accordingly, we conclude that you may not withhold any portion of the submitted information relating to TASB on the basis of its proprietary interest in the information. Because the school district has made no arguments against disclosure for the submitted information, it must be released to the requestor.

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

¹ Specifically, True Choice seeks to withhold: "(i) the average discounts or reductions from the standard fees charged by healthcare providers and facilities in one or more of the [True Choice] preferred provider networks with respect to in-patient and out-patient services those providers and facilities perform or supplies they provide under contracts with one or more members of [True Choice], and (ii) claim repricing and discounting reductions contracted for by [True Choice] with healthcare providers and facilities concerning out-of-network claims." We note that this information was responsive to a previous request for information submitted to the school district and was addressed by this office in Open Records Letter No. 2004-10019.

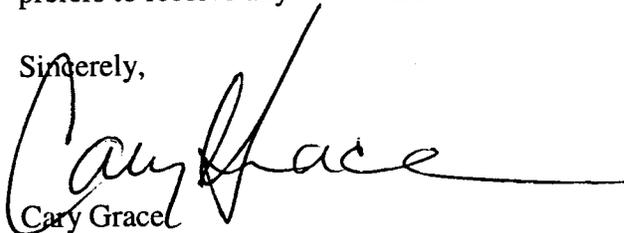
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 216588

Enc. Submitted documents

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