



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2005

Ms. Sylvia N. Salazar  
Assistant General Counsel  
Employees Retirement System of Texas  
P. O. Box 13207  
Austin, Texas 78711-3207

OR2005-04393

Dear Ms. Salazar:

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# 224573.

The Employees Retirement System of Texas (the "system") received a request for information related to "the most recent Request for Proposal for the State of Texas Employee Dental Program." You state that you are releasing some of the requested information. You claim, however, that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. In addition, you state that release of the requested information may implicate the proprietary interests of Aetna Dental Inc. ("Aetna") and the Government Employees Hospital Association, Inc. ("GEHA"). Accordingly, you notified Aetna and GEHA of the request and of each company's right to submit arguments to this office as to why the requested 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 the claimed exceptions and reviewed the submitted information.

Initially, we address the system's claim of section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. While the system claims section 552.101 in conjunction with section 552.110, we note that exceptions under the Act do not constitute statutory law for purposes of section 552.101. The system

does not provide any other arguments that demonstrate that the submitted information is confidential by law. Furthermore, we are not aware of any provision of law that makes the submitted information confidential under section 552.101. Therefore, the system may not withhold any of the submitted information under section 552.101.

The system, Aetna, and GEHA each claim that portions of the submitted information are excepted under section 552.110(b) of the Government Code. This section excepts from public disclosure "commercial 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." *See* Gov't Code § 552.110(b).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Based on our review of GEHA's arguments and the submitted information, we find that GEHA has adequately demonstrated that the information it seeks to withhold constitutes commercial or financial information, the release of which would cause GEHA substantial competitive harm for purposes of section 552.110(b). Further, we find that Aetna has adequately demonstrated that portions of the submitted information constitute commercial or financial information, the release of which would cause Aetna substantial competitive harm for purposes of section 552.110(b). Accordingly, the system must withhold the information that we have marked pursuant to section 552.110(b). We find, however, that Aetna has not sufficiently shown that the release of any of the remaining information would be likely to cause Aetna any substantial competitive harm. In addition, we find that the system has not provided specific factual evidence to support the allegation that release of any of the submitted information would cause Aetna substantial competitive injury. *See* Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative). We note that the pricing information of a winning bidder such as Aetna is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision No. 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). We therefore conclude that none of the remaining information is excepted from disclosure under section 552.110.

In summary, the system must withhold the marked portions of the submitted information pursuant to section 552.110 of the Government Code. The remaining submitted information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 224573

Enc. Submitted documents

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