



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2005

Ms. Lydia Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2005-10710

Dear Ms. Perry:

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# 237122.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information relating to proposals for employee assistance program services, ("EAP"). You state that the district has released some of the responsive information. Although the district takes no position as to the disclosure of the remaining requested information, you assert that its release may implicate the proprietary interests of EAP vendors. Accordingly, you state that the district has notified these vendors of the request and of their right to submit arguments to this office as to why its information should not be released.<sup>1</sup> See Gov't Code § 552.305(d) (permitting third party with proprietary interest 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 to disclosure under Public Information Act in certain circumstances).

---

<sup>1</sup>The district notified the following third parties pursuant to section 552.305: Managed Health Network ("MHN"); United Behavioral Health ("UBH"); Deer Oaks EAP ("DOE"); and Alliance Work Partners ("AWP").

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 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, MHN, UBH, DOE, and AWP have not submitted to this office any reasons explaining why the information should not be released. We thus have no basis to conclude that the release of the submitted information will harm the proprietary interests of any third party. *See* Gov't Code § 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 (1990). Accordingly, the district may not withhold any of the submitted information on the basis of any propriety interest that these EAP vendors may have in the information.

However, we note that a portion of the information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* 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 such copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Thus, the district must release the submitted information to the requestor; however, in releasing information that is protected by copyright, the district must comply with copyright law.

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); *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 Office of the Attorney General 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. 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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 237122

Enc. Submitted documents

c: Donna McFaul  
MHNet  
4006 Beltline Road, Suite 205  
Addison, Texas 75001  
(w/o enclosures)

Dannt Amos  
Managed Health Network  
5525 N. MacArthur #800  
Irving, Texas 75038  
(w/o enclosures)

Martin Struth  
United Behavioral Health  
425 Market Street 15<sup>th</sup> Floor  
San Francisco, California 94105  
(w/o enclosures)

John Shelton  
Alliance Work Partners  
2525 Wallingwood, Bldg. 5  
Austin, Texas 78746  
(w/o enclosures)

Bobby Burns  
Asst. Supt. For Admin./Peronnel  
Carrollton-Farmers Branch I.S.D.  
1445 North Perry Road  
Carrollton, Texas 75006  
(w/o enclosures)

Alicia Barrera  
Deer Oaks EAP  
7272 Wurzbach #601  
San Antonio, Texas 78240  
(w/o enclosures)

Robert McLaughlin, C.P.M.  
Carrollton-Farmers Branch I.S.D.  
1505 Randolph Street  
Carrollton, Texas 75011  
(w/o enclosures)