



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2006

Ms. Laura Garza Jimenez  
County Attorney  
Nueces County  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2006-13685

Dear Ms Jimenez:

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# 264958.

The County of Nueces (the "county") received a request for spreadsheets and supporting documentation used in a presentation to the Nueces County Commissioners' Court (the "court") regarding third party administration services. You state that you have released one spreadsheet that was given to the court. However, you state that a portion of a supporting spreadsheet may implicate the proprietary interests of third parties. Although you raise no exception to disclosure of this information on behalf of the county, you notified the interested third parties, CBCA Administrator, Inc., FiserV Health, Entrust, Inc. ("Entrust"), United Healthcare, Humana Inc., and American Administrative Group, of the request and of their right to submit arguments to this office as to why their information should not be released. 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 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 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, only Entrust has submitted arguments to this office explaining how release of its pricing and financial information would

affect its proprietary interests. Therefore, we have no basis to conclude that the release of the submitted spreadsheet will harm the proprietary interests of CBCA Inc., FiserV Health, United Healthcare, Humana Inc., and American Administrative Group. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the system must release the submitted information as it pertains to CBCA Inc., FiserV Health, United Healthcare, Humana Inc., and American Administrative Group.

Section 552.110(b) protects “[c]ommercial 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[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Entrust states that the submitted pricing information is commercial or financial information excepted under section 552.110(b) of the Government Code. Entrust argues that, if released, the pricing information would give its competitors the knowledge needed to beat Entrust's economic assumptions. Entrust states that this knowledge would result in an unfair competitive advantage that would cause substantial harm to its business. After reviewing Entrust's arguments and the information at issue, we find that Entrust has demonstrated that the release of its pricing information contained in the submitted spreadsheet would cause the company substantial competitive harm. Accordingly, the county must withhold Entrust's pricing information, which we have marked, under section 552.110(b) of the Government Code. The remaining 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).

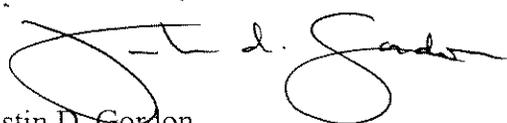
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 264958

Enc. Submitted documents

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FiserV Health  
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