



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2006

Mr. Carey E. Smith  
General Counsel  
Texas Health & Human Services Commission  
P. O. Box 13247  
Austin, Texas 78711

OR2006-02368

Dear Mr. Smith:

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# 243795.

The Texas Health and Human Services Commission (the "commission") received a request for information related to certain specified electronic benefits transfer ("EBT") vendor contracts, including one contract with Northrop Grumman Information Technology, Inc. ("NGIT"). You inform us that you have not released the information related to the commission's contract with NGIT but that the commission will release the other responsive information.<sup>1</sup> Although you make no arguments and take no position as to whether the information related to NGIT is excepted from disclosure, you indicate that this information may be subject to NGIT's proprietary interests. Accordingly, you state that pursuant to section 552.305 of the Government Code, you notified NGIT of the request and of its opportunity to submit comments to this office. *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). NGIT provided this office with comments asserting portions of the requested information are

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<sup>1</sup>We note that the commission withdrew its request for an open records decision regarding the contract between the commission and GTECH after GTECH informed the commission it had no objection to the release of this information. Accordingly, we do not address in this ruling the submitted information pertaining to GTECH.

excepted from disclosure. We have considered the submitted comments and have reviewed the information you have submitted.

NGIT asserts that specific portions of the information at issue are excepted from disclosure pursuant to section 552.110(b) of the Government Code; NGIT describes the information it wishes to be withheld as the "pricing and payment schedule" and "personnel names and resumes." Section 552.110(b) excepts from disclosure "[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." 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).

Having considered NGIT's submitted comments and reviewed the information at issue, we find NGIT has made only conclusory allegations that release of the information at issue, "pricing and payment schedule" and "personnel names and resumes," would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support these allegations. *See* Open Records Decision Nos. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 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 is too speculative), 319 at 3 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Moreover, the pricing information of a winning bidder is generally not excepted under section 552.110(b) and this office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *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). Accordingly, no portion of the information at issue may be withheld pursuant to section 552.110(b) and the requested 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); *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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 243795

Enc. Submitted documents

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