



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2006

Mr. Bob Ramirez  
Attorney  
Escamilla & Poncek, Inc.  
P. O. Box 200  
San Antonio, Texas 78291-0200

OR2006-05730

Dear Mr. Ramirez:

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# 250576.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to Request for Proposal No. 05-147 LS regarding district employee health benefits: 1) original proposals, 2) spreadsheets and reports analyzing proposals, and 3) best and final offer proposals. Although you take no position as to whether the requested information is excepted from disclosure, you indicate that the submitted information may be subject to the third-party proprietary interests of Aetna, Blue Cross Blue Shield ("BCBS"), and United Healthcare ("United"). Thus, pursuant to section 552.305 of the Government Code, you inform us you have notified Aetna, BCBS, and United of the request and of each company's right to submit arguments to this office as to why the 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 reviewed the submitted information.

Initially, we note 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, this office has

not received comments from Aetna, BCBS, or United explaining how the release of the submitted information will affect their respective proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of either Aetna, BCBS, and United. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

However, we note the submitted information includes insurance policy numbers. Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136.<sup>1</sup> Accordingly, the district must withhold the policy numbers in the submitted information pursuant to section 552.136.

Finally, we note that portions of the submitted information include notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *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 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).

In summary, the policy numbers in the submitted information must be withheld under section 552.136 of the Government Code. The remaining submitted information must be released; 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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/eb

Ref: ID# 250576

Enc. Submitted documents

c: Mr. Andrew Grove  
Human Inc.  
8431 Fredericksburg Road  
San Antonio, Texas 78229  
(w/o enclosures)

Aetna, Inc.  
Attn: Joe Riojas  
Buffalo Speedway, Suite 150  
Houston, Texas 77098  
(w/o enclosures)

Blue Cross Blue Shiled  
Attn: Hector Licon  
8200 IH 10 West, Suite 420  
San Antonio, Texas 78230  
(w/o enclosures)

United Healthcare  
Attn: John Bass  
5959 Northwest Parkway, Suite 107  
San Antonio, Texas 78249-3340  
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