ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2006

Ms. Carol Longoria
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2006-11039

Dear Ms. Longoria:

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# 260619.

The University of Texas at Austin (the "university") received two requests for information pertaining to communications and consulting services between University Health Services ("UHS") and Stephen L. Beckley & Associates, Inc. ("Beckley"). You claim that the requested information is excepted from disclosure under section 552.104, 552.111, and 552.137 of the Government Code. You also state that you notified all interested third parties of the university's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1] We have also considered comments submitted by the

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You informs us of the following:

> Beckley is a consulting firm currently negotiating with UHS to secure a sole-source contract to conduct a feasibility study of outsourcing medical billing. Based on the evaluation presented by Beckley, or another consultant ultimately hired, UHS may consider a change in business practices that will result in the issuance of an RFP for third party billing services. . . . Release of [the requested] information would disadvantage the University in negotiating a contract with Beckley or another consultant, and make it difficult for the University to negotiate a fair price with vendors that may consider responding to an RFP for billing services.

Based on your arguments and our review of the submitted information, we conclude that release of the submitted information would give advantage to a competitor or bidder; therefore, the university may withhold the submitted information under section 552.104.[2]

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

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office.

[2]As we are able to resolve this under section 552.104, we do not address the remaining arguments for exception of the requested information.

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. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

JLC/eb

Ref: ID# 260619

Enc. Submitted documents

c: Mr. Richard F. Whiteley
Bracewell & Giuliani, L.L.P.
711 Louisiana St., Suite 2300
Houston, Texas 77002-2781
(w/o enclosures)

Mr. Peter J. Papadimos
The University of Toledo
Mail Stop 943
Toledo, Ohio 43606-3390
(w/o enclosures)

Dr. Salme Harju Steinberg
Northeastern Illinois University
5500 North St. Louis
Chicago, Illinois 60625
(w/o enclosures)

Ms. Lynette Temple
University of California-Davis
Mark Hall, 2nd Floor, Suite 230
One Shields Avenue
Davis, California 95616
(w/o enclosures)

Ms. Danielle A. Hess
Office of General Counsel
University of Idaho
Moscow, Idaho 83844
(w/o enclosures)

Ms. Teila Tennent
Office of General Counsel

The New School University
80 Fifth Avenue, Room 800
New York, New York 10011
(w/o enclosures)