



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2007

Ms. Cynthia Villarreal-Reyna
Section Chief Agency Counsel
Texas Department of Insurance
MC 110-1A
P. O. Box 149104
Austin, Texas 78714-9104

OR2007-02239

Dear Ms. Villarreal-Reyna:

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# 272105.

The Texas Department of Insurance (the "department") received a request for "the approved Exhibit 18 from every TDI/DWC certified network." Although you take no position with respect to the requested information, you indicate that release of the information at issue may implicate the proprietary interests of the following companies: Aetna Workers Compensation Access, Compkey/Forte, Concentra TX Star, Concerta HCN, Energy Plaza, First Health/AIGCS, First Health HCN, First Health/Travelers, Genex, Hartford, Hartford WC HCN-FH, IMO, IMO-Med Select, Intracorp., Liberty Health Care, National Choicecare, North TX Innovative HCN, SHA LLC, Southwest Medical Providers, Specialty Risk Services TX WC HCN, and Zurich Services Corp. Accordingly, you state and provide documentation showing that you notified these companies of the request and of their right to submit arguments to this office as to why the requested 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 Act in certain circumstances). We have reviewed the submitted arguments and the submitted information.

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 the following companies explaining how the release of the submitted information will affect their proprietary interests: Aetna Workers Compensation Access, Concentra TX Star, Concerta HCN, Energy Plaza, First Health/AIGCS, First Health HCN, First Health/Travelers, Genex, Hartford, Hartford WC HCN-FH, IMO, IMO-Med Select, Intracorp., Liberty Health Care, National Choicecare, North TX Innovative HCN, SHA LLC, Southwest Medical Providers, Specialty Risk Services TX WC HCN, and Zurich Services Corp. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of these companies. *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). Accordingly, the department may not withhold any of the submitted information based on the proprietary interests these companies may have in the submitted information.

CompKey/Forte argues its information is excepted under sections 552.104 and 552.110 of the Government Code. Section 552.104(a) excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies, not the proprietary interests of private parties such as CompKey/Forte. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Thus, because the department does not claim this exception, the department may not withhold any information under section 552.104 of the Government Code.

CompKey/Forte also argues its information is excepted under section 552.110(b) of the Government Code. 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. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Having considered the arguments submitted by CompKey/Forte, we conclude that it has made only conclusory allegations and has provided no specific factual or evidentiary showing to support its allegations that release of its information would cause it substantial competitive injury. *See* Gov't Code § 552.110; *see also, e.g.*, Open Records Decision Nos. 661 at 5-6 (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). Thus, none of the submitted information may be withheld under section 552.110 of the Government Code.

Finally, we note that a portion of the submitted information has 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 materials that are subject to copyright protection 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). Accordingly, the submitted information must be released; however, in releasing information that is protected by copyright, the department 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 272105

Enc. Submitted documents

c: Ms. Patsy Shelton
P. O. Box 13367
Austin, Texas 78711
(w/o enclosures)

Ms. Donna Lucas
Aetna Workers Compensation Access
980 Jolly Road, UIIN
Blue Bell, Pennsylvania 19422
(w/o enclosures)

Mr. Patrick Scullion
Aetna Workers Compensation Access
151 Farmington Avenue, RC 61
Hartford, Connecticut 06156
(w/o enclosures)

Ms. Claire Onks
Compkey/Forte
7600 Chevy Chase Drive, Suite 200
Austin, Texas 78752
(w/o enclosures)

Mr. Dan Moore
Compkey/Forte
7600 Chevy Chase Drive, Suite 200
Austin, Texas 78752
(w/o enclosures)

Mr. Bruce Singleton
Concentra TX Star
5080 Spectrum Drive
Ste. 1200 West
Addison, Texas 75001
(w/o enclosures)

Mr. Tab Urbantke
Energy Plaza, 30th Floor
1601 Bryan Street
Dallas, Texas 75201-3402
(w/o enclosures)

Kelly Weigand
First Health HCN
4141 North Scottsdale Road
Scottsdale, Arizona 85251
(w/o enclosures)

Ms. Denise Southall
First Health HCN
3625 West Royal Lane, Suite 150
Irving, Texas 75063
(w/o enclosures)

Ms. Karen Weitendorf
First Health.Travelers
3200 Highland Avenue
Downers Grove, Illinois 60515
(w/o enclosures)

Mr. Tom Mastri
First Health/Travelers
3200 Highland Avenue
Downers Grove, Illinois 60515
(w/o enclosures)

Ms. Polly McGraw
Genex
440 East Swedesford Road, Suite 1000
Wayne, Pennsylvania 19087
(w/o enclosures)

JA McCollum
The Hartford WC HCN-FH
690 Asylum Avenue, T9-106
Hartford, Connecticut 06115
(w/o enclosures)

Ms. Barbara Petitjean
Hartford
690 Asylum Avenue, T5-100
Hartford, Connecticut 06115
(w/o enclosures)

Ms. Tricia Echols
IMO-Med Select
4100 Midway Road
Carrollton, Texas 75007
(w/o enclosures)

Ms. Catherine Benavidez
IMO
4100 Midway Road, Suite 1145
Carrollton, Texas 75007
(w/o enclosures)

Ms. Susan McDonough
Intracorp.
11095 Viking Drive
Eden Prairie, Minnesota 55344
(w/o enclosures)

Mr. Jared Gross
Intracorp.
1601 Chestnut Street, TL07
Philadelphia, Pennsylvania 19192
(w/o enclosures)

Ms. Kathleen McCabe
Liberty Health Care
100 Liberty Way
Dover, New Hampshire 03820
(w/o enclosures)

Ms. Melissa West
National Choicecare
P. O. Box 691205
San Antonio, Texas 78269
(w/o enclosures)

Ms. Debbie Ward
National Choicecare
P. O. Box 691205
San Antonio, Texas 78269
(w/o enclosures)

Mr. Jose Marquez
North TX Innovative HCN
7289 Bedford Eules Road West, Suite 109
Hurst, Texas 76053
(w/o enclosures)

Mr. CE Wiggins III
North TX Innovative HCN
7289 Bedford Eules Road West, Suite 109
Hurst, Texas 76053
(w/o enclosures)

Ms. Paige Alvarado
SHA LLC
1901 West Loop 289, Suite 9
Lubbock, Texas 79407
(w/o enclosures)

Mr. Keenan Freeman
SHA LLC
12940 North Hwy 183
Austin, Texas 78750
(w/o enclosures)

Ms. Sally Lopez
Southwest Medical Providers
613 N. W. Loop 410, Suite 800
San Antonio, Texas 78216
(w/o enclosures)

Mr. Brian Harms
Specialty Risk Services TX WC HCN
Law Dept., The Hartford
690 Asylum Avenue
Hartford, Connecticut 06105
(w/o enclosures)

Ms. Toni Piper
Specialty Risk Services TX WC HCN
16633 Dallas Parkway, Suite 500
Addison, Texas 75001
(w/o enclosures)

Ms. Gail Carollo
Specialty Risk Services WC HCN-FH
225 Asylum Avenue
Hartford, Connecticut 06103
(w/o enclosures)

Ms. Kathleen Gallagher
Zurich Services Corp.
1400 American Lane, Tower 2-6th Floor
Schaumburg, Illinois 60196-1056
(w/o enclosures)

Mr. David Bowers
Zurich Services Corp.
1400 American Lane, Tower 2-6th Floor
Schaumburg, Illinois 60196-1056
(w/o enclosures)