



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 7, 2007

Mr. Clyde A. Pine, Jr.  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2007-11722

Dear Mr. Pine:

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# 288619.

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to the district's contract for third party administration of the district group health plan. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also believe that some of the requested information implicates the proprietary interests of third parties under section 552.110 of the Government Code. You indicate that the district notified Restat, LLC; WEB-TPA Employer Services; Walgreens Health Initiative, Inc.; Total Administrative Service Corp.; Stop Loss Concepts, Inc.; Aetna Life Insurance Company ("Aetna"); AmeriBen/EC Group; American Administrative Group, Inc.; Assured Benefits Administrators; Blue Cross Blue Shield of Texas; FISERV Health Plan Administrators, Inc.; Free First Healthcare Clinics, L.P.; Group and Pension Administrators; Humana Health Plan of Texas, Inc.; ING Employee Benefits; and Medco Health Solutions, Inc. of this request for information and of each company's right to submit arguments to this office as to why the requested information should not be

released.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that the requestor seeks only the proposals of the finalists for the contract award at issue. However, you appear to have submitted all proposals received by the district. The proposals of companies that were not chosen as finalists are not responsive to this request. This ruling does not address this non-responsive information, and it need not be released in response to this request.

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. *Open Records Decision No. 541 at 4 (1990)*. However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. *Open Records Decision Nos. 306 (1982), 184 (1978)*.

You state that the district is currently in contract negotiations with Aetna, but has not yet executed a contract on the subject matter of the proposal at issue. Based on your representations, we conclude that the district may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). Because our determination on this issue is dispositive, we need not address arguments against disclosure submitted by the third parties.

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

---

<sup>1</sup>*See* Gov’t Code § 552.305(d); *Open Records Decision No. 542 (1990)* (statutory predecessor to Gov’t Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

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/jh

Ref: ID# 288619

Enc. Submitted documents

c: Mr. John Dunn  
Access Administrators, Inc.  
7430 Remcon Building C  
El Paso, Texas 79912  
(w/o enclosures)

Mr. Joe Halow  
Assured Benefits Administrators  
4100 Rio Bravo, Suite 211  
El Paso, Texas 79902  
(w/o enclosures)

Mr. J. W. Dewbre  
General Counsel  
Group & Pension Administrators, Inc.  
1500 North Greenville Avenue, 4<sup>th</sup> Floor  
Richardson, Texas 75081  
(w/o enclosures)

Mr. Mark R. Chulick  
Regional Counsel  
Aetna - Southwest Region  
2777 Stemmons Freeway  
Dallas, Texas 75207  
(w/o enclosures)

Mr. George M. Hamilton, III  
Assistant General Counsel  
BlueCross BlueShield of Texas  
P. O. Box 655730  
Dallas, Texas 75265-5730  
(w/o enclosures)

Mr. James David Kelly  
General Counsel  
American Administrative Group  
Free First Healthcare Clinics  
2002 West Loop 289  
Wayland Plaza, Suite 110  
Lubbock, Texas 79407-7701  
(w/o enclosures)

Ref: ID# 288619

Mr. J. Derrick Price  
Counsel to Humana Insurance  
McGinnis, Lochridge & Kilgore, L.L.P.  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(Enc. Submitted Documents)

Ms. Chelle Goldestsky  
Director  
FISERV Health, Inc.  
5500 Wayzata Boulevard, Suite 500  
Minneapolis, Minnesota 55416  
(w/o enclosures)

Mr. Matthew Day  
Attorney  
Walgreens Health Initiatives  
1411 Lake Cook Road, MS L319  
Deerfield, Illinois 60015  
(w/o enclosures)

Mr. Reggie L. Wenger  
Lichtsinn & Haensel S. C.  
Counsel to TASC  
111 East Wisconsin Avenue, Suite 1800  
Milwaukee, Wisconsin 53202  
(w/o enclosures)

Mr. Wayne Kostka  
Marketing Manager  
Restat, LLC  
1335 Bluesail Circle  
Westlake Village, California 91361  
(w/o enclosures)

Ref: ID# 288619

Mr. Donald Wisniewski  
Jr. CEO  
Stop Loss Concepts, Inc.  
5854 Heritage Landing Drive  
East Syracuse, New York 13057  
(w/o enclosures)

Ms. Laren R. Walker  
Chief Financial Officer  
AmeriBen Solutions, Inc  
3449 East Copper Point Drive  
Meridian, Idaho 83642  
(w/o enclosures)

Mr. Michael McCabe  
President & CEO  
WEB-TPA Employer Services  
8500 Freeport Parkway South, Suite 400  
Irving, Texas 75063  
(w/o enclosures)

Mr. George Sens  
Regional Manager  
ING Employee Benefits  
Relilastar Life Insurance Company  
20 Washington Avenue South  
Minneapolis, Minnesota 55401  
(w/o enclosures)

Mr. Stan Shults  
Director-Sales  
Medco Health Solutions, Inc.  
100 Parsons Pond Drive  
Franklin Lakes, New Jersey 07417  
(w/o enclosures)