



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 24, 2008

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

OR2008-08534

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# 313797.

The University of Texas System (the "system") received a request for the contract with United Healthcare Student Resources ("Student Resources") for student health insurance and annual "paid claims reports."¹ You indicate that the submitted information may be excepted under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, but take no position as to whether this information is excepted under those sections. Student Resources, however, asserts in correspondence to this office that some of its information is excepted under section 552.110 of the Government Code. *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 reviewed the submitted arguments and information.

We initially note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal

¹The system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Student Resources asserts that the information at issue is excepted under section 552.110 of the Government Code. 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) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

The information that Student Resources seeks to withhold consists of (1) a renewal methodology spreadsheet and (2) plan utilization reports. Student Resources asserts that the renewal methodology spreadsheet “is highly sensitive because it details the specific costs Student Resources incurs in offering its insurance products, the efficiencies Student Resources (and United Healthcare) achieves in offering its products, and the profits Student Resources receives as a result of offering its services at a particular rate.” Student Resources also informs us that it “generates utilization data for the purpose of identifying the specific services that are utilized by its insureds and the resulting profitability of each service” and that each report “contains a calculation of the loss ratio that results from the provision of services at each particular facility and System-wide.” Student Resources argues that “public disclosure of Student Resources’ utilization data (which Student Resources uses to determine pricing of its insurance product) to third parties will allow Student Resources’ competitors to reverse-engineer Student Resources’ costs and rates and offer similar services with a lower profit margin than Student Resources currently receives, thereby requiring Student Resources to either lose business or lower its profit margins to gain business.” Having considered Student Resources’ arguments and reviewed the information at issue, we find Student Resources has established that the release of the information it seeks to withhold would cause it substantial competitive injury; therefore, the system must withhold this information, which we have marked, under section 552.110(b). The system must release the remaining information.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

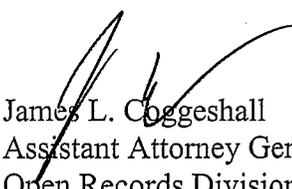
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 313797

Enc. Submitted documents

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