



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2008

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2008-17060

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# 330013.

The Lower Colorado River Authority (the "LCRA") received a request for the scoring analysis and data used to assess the bids received in response to a specified request for proposals, a copy of the top three bid proposals, exclusive of Worklife Innovations' ("Worklife") bid proposal, the awarded vendor's bid proposal, and the bid proposal submitted by Deer Oaks EAP Services ("Deer Oaks"). Although you take no position as to whether the submitted information is excepted from disclosure, you indicate that the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified the interested third parties, Deer Oaks, Employee Network, Inc. ("ENI"), Alliance Work Partners ("Alliance"), and MHN Services ("MHN"), of the request and of each company's right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released; *see also* Open Records Decision No. 542 (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 in certain circumstances). We have reviewed the submitted information.

Initially, you inform us the bid proposals submitted by ENI, Alliance, and MHN were the subject of a previous request for information, in response to which this office issued Open

Records Letter No. 2008-15207 (2008).¹ In that ruling, we concluded: (1) the marked information in WorkLife's and ENI's proposals must be withheld under section 552.110(a) of the Government Code; (2) the marked information in ENI's proposal must be withheld under section 552.110(b) of the Government Code; (3) the marked insurance policy numbers must be withheld under section 552.136 of the Government Code; and (4) the remaining information must be released, however, any information protected by copyright must be released in accordance with copyright law. Based on your representations, and as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, we conclude the LCRA must continue to rely on that ruling as a previous determination and withhold or release the proposals submitted by ENI, Alliance, and MHN in accordance with Open Records Letter No. 2008-15207. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Deer Oaks, ENI, Alliance, and MHN have failed to submit to this office any reasons explaining why the requested information should not be released. Therefore, these companies have failed to provide us with any basis to conclude that they have protected proprietary interests in any of the submitted information, and none of their information may be withheld on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (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), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

We note that the submitted information contains insurance policy numbers and customer account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device").

¹We note that Alliance's and MHN's proposals have been submitted as Exhibit C2 but the LCRA has not submitted EIN's proposal for review.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Accordingly, the insurance policy numbers and customer account numbers we have marked must be withheld under section 552.136 of the Government Code.

In summary, the LCRA must continue to rely on Open Records Letter No. 2008-15207 as a previous determination and withhold or release the proposals submitted by ENI, Alliance, and MHN in accordance with that ruling. The LCRA must withhold the insurance policy numbers and customer account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.

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).

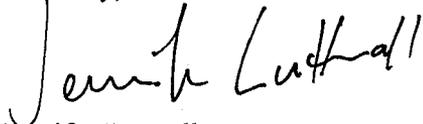
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 330013

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Ms. Denise McDonald
Dear Oaks EAP Services,
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(w/o enclosures)