



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2009

Ms. Sara Hoglund, CPPB  
Contract Administrator  
Collin County  
Office of the Purchasing Agent  
200 South McDonald, Suite 230  
McKinney, Texas 75069

OR2009-01605

Dear Ms. Hoglund:

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# 334383.

Collin County (the "county") received a request for six categories of information pertaining to the proposals submitted to the county in response to a particular RFP by Aetna and UnitedHealthcare ("United"). Although you take no position on the requested information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state and provide documentation showing the county notified Aetna and United of the 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. *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 submitted information.

We note 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 it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B).* As of the date of this letter, neither Aetna nor United has submitted to this office any reasons explaining why their submitted information should not be released. Therefore, Aetna and United have not provided us with any basis to conclude they have

protected proprietary interests in any of the submitted information. *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. Accordingly, we conclude the county may not withhold any portion of the submitted information on the basis of any proprietary interest Aetna or United may have in the information.

We note some of the submitted information appears to be protected by copyright. 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 copyrighted materials 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).

In summary, the submitted information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eb

Ref: ID# 334383

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

United Healthcare  
Michael Langford  
5800 Granite Parkway, Suite 700  
Plano, Texas 75024  
(w/o enclosures)

Aetna  
Luis Ellis-Fuentes  
2777 North Stemmons Freeway, 3<sup>rd</sup> Floor  
Dallas, Texas 75207  
(w/o enclosures)