



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-06614

Dear Mr. Smith:

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# 343910 (OR-20090311-4207).

The Texas Health and Human Services Commission (the "commission") received a request for the winning proposal, procurement scoring, and evaluation sheet for the contract awarded for request for proposal #529-08-0187. You state you will release most of the requested information. While you raise section 552.110 of the Government Code as a possible exception to disclosure for the submitted information, you make no arguments as to whether the submitted information is excepted from public disclosure under this section. Instead, you state, and provide documentation showing, the commission notified Altarum Headquarters ("Altarum") of the request for information and its 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 reviewed 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 information relating to that party should be withheld from public disclosure. *See Gov't Code*

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Altarum explaining why its requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes Altarum's proprietary information, and none of it may be withheld on that basis. *See id.* § 552.110; 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 (1990).

We note portions of the submitted information are 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 protected by copyright. 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 materials protected by copyright, 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). The submitted information must be released, 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, 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 343910

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Christian Hitchcock
Altarum Institute
3520 Green Court, Suite 300
Ann Arbor, Michigan 48105-1579
(w/o enclosures)