



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2009

Mr. Robert Vina, III  
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.  
6521 North 10<sup>th</sup> Street Suite C  
McAllen, Texas 78504

OR2009-10729

Dear Mr. Vina:

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# 350969.

The Los Fresnos Consolidated Independent School District (the "district"), which you represent, received a request for (1) a proposal by Blue Cross/Blue Shield of Texas ("Blue Cross") for administration of the district's employee health benefit plan and (2) the most recent billing received from Blue Cross. You state that some of the requested information is the subject of a previous open records letter ruling. You also claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.136, and 552.137 of the Government Code. Additionally, you believe that this request for information may implicate Blue Cross's proprietary interests. You notified Blue Cross of this request for information and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.<sup>2</sup>

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<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).

<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

You state that Blue Cross's proposal was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2008-14728 (2008). In that ruling, we concluded that the proposal is excepted from disclosure under section 552.104 of the Government Code. You inform us that the previous ruling encompasses pages AG-00001 through AG-00432 of the submitted documents. You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the district may withhold pages AG-00001 through AG-00432 on the basis of Open Records Letter No. 2008-14728.<sup>3</sup> See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We next note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Blue Cross. Thus, Blue Cross has not demonstrated that any of the remaining information at issue is proprietary for the purposes of the Act. Therefore, the district may not withhold any of the remaining information on that basis. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address your exceptions to disclosure of the remaining information. We begin with section 552.104 of the Government Code, as it is the most inclusive exception you claim. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. See Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. See *id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You inform us that the remaining information at issue consists of billing records relating to an existing contract with Blue Cross to provide health care services to the district. You explain that bids for health insurance for district employees will be taken by the district on a regular basis. You contend that release of the submitted billing records would give a prospective vendor an unfair advantage by allowing it to undercut future bids. Having

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<sup>3</sup>As we are able to make this determination, we do not address your other arguments against disclosure of the submitted information that is encompassed by the previous ruling.

considered your arguments and reviewed the information at issue, we conclude that the district may withhold page AG0433, Blue Cross's Summary of Charges for April 2009, under section 552.104 of the Government Code. We find that you have not adequately demonstrated that the release of any of the remaining information in the submitted billing records would interfere with future bidding for a contract of the type to which the information at issue pertains. We therefore conclude that the district may not withhold any of the remaining information under section 552.104.

You also raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by statute. You raise section 552.101 in conjunction with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); see also Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. See 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. See *id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. See 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." See ORD 681 at 8; see also Gov't Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. See *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App. — Austin 2006, no pet.); ORD 681 at 9; see also Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA governs the public availability of medical records. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). You contend that the MPA is applicable to the remaining information at issue. You have not demonstrated, however, that the remaining information either consists of medical records or contains information obtained from medical records. *See* Occ. Code § 159.002(a)-(c). We therefore conclude that the district may not withhold any of the remaining information on the basis of the MPA.

You also raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined that common-law privacy encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (identifying public and private portions of certain state personnel records), 545 at 4 (1990)

(attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

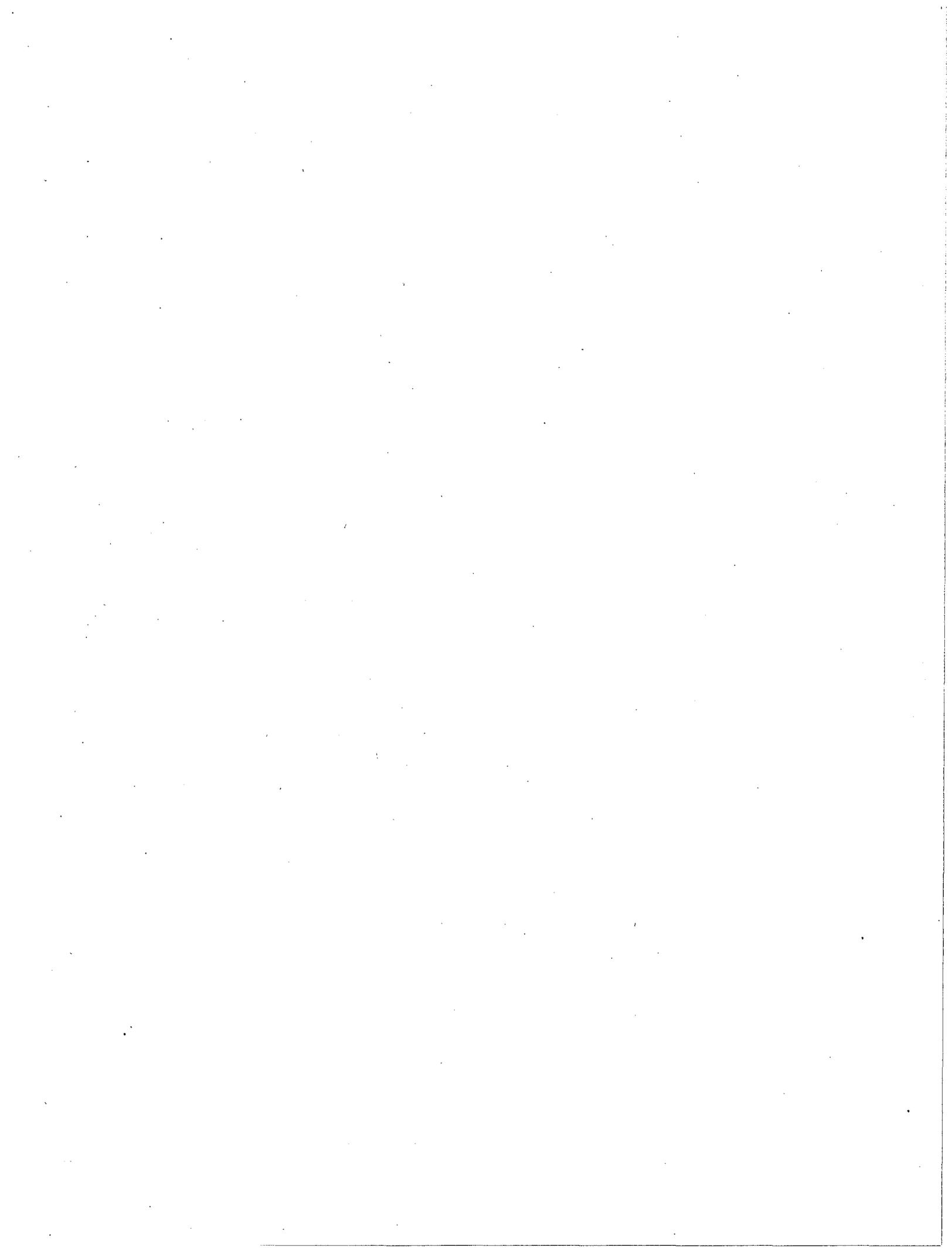
We find that the remaining documents contain personal financial information that is protected by common-law privacy. We have marked the types of information that the district must withhold on that basis under section 552.101. Although you also seek to withhold the remaining information at issue on privacy grounds, we find that the remaining information is neither intimate or embarrassing nor a matter of no legitimate public interest. We therefore conclude that the district may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Lastly, we address your claim under section 552.136 of the Government Code. Section 552.136(b) provides 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." Gov't Code § 552.136(b). You seek to withhold group and personal identification numbers of employees of the district under section 552.136. You have not demonstrated, however, that the information in question may be used to "obtain money, goods, services, or another thing of value" or "initiate a transfer of funds[.]" *See id.* § 552.136(a) (defining "access device"). We therefore conclude that the district may not withhold the group and personal identification numbers under section 552.136 of the Government Code.

In summary: (1) the district may withhold pages AG-00001 through AG-00432 on the basis of Open Records Letter No. 2008-14728; (2) the district may withhold page AG-0433 under section 552.104 of the Government Code; and (3) the district must withhold the types of information that we have marked in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted information must be released.

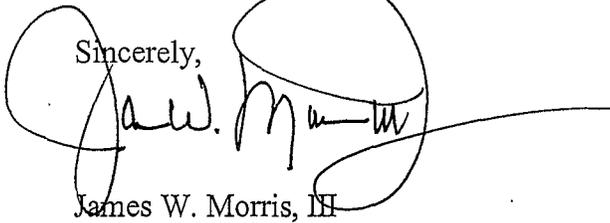
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", is written over a large, light-colored circular stamp or watermark.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 350969

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Steve Keevan  
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