ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2009

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

OR2009-11649

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# 352685 (OR-20090603-4387).

The Texas Health and Human Services Commission (the "commission") received a request for the winning proposals submitted in response to RFP No. 529-06-0425. You state some of the requested information has been released. Although the commission takes no position as to the disclosure of the submitted information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you provide documentation showing that the commission has notified four interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.[1] *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 received comments from Litaker, and have reviewed the submitted arguments and information.

Initially, we note you have only submitted two of the requested proposals for our review. To the extent any additional responsive information existed on the date the commission received this request, we assume you have released it to the requestor. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also*

[1]The third parties are: Computer Publications Unlimited, Propel Consulting, Inc., Software Engineering Services, and The Litaker Group ("Litaker").

Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, 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) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only Litaker has submitted comments to this office regarding how the release of its submitted information will affect its proprietary interests. Thus, we have no basis to conclude that the release of any portion of the remaining third parties' submitted information would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the commission may not withhold any portion of the submitted information on the basis of any proprietary interest the third parties who did not submit comments to this office may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. §§ 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). The term "return information" includes "the nature, source, or amount of [a taxpayer's] income[.]" *See* 26 U.S.C. § 6103(b)(2). We have marked the tax return information that the commission must withhold under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.[2]

Litaker notes the remaining information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[3] Gov't Code § 552.147. We agree the commission may withhold social security numbers under section 552.147 of the Government Code.

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[2]As our ruling is dispositive, we need not address Litaker's argument against disclosure of this information.

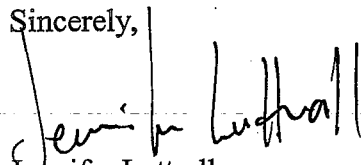
[3]Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

In summary, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The commission may withhold the submitted social security numbers under section 552.147 of the Government Code. As no other exceptions to disclosure have been raised, the remaining 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 352685

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Dr. John R. Litaker
Managing Director
The Litaker Group
P.O. Box 160505
Austin, Texas 78716
(w/o enclosures)

Ms. Jane E. Scott
CEO
Computer Publications Unlimited
Suite 1030
4501 Spicewood Springs Road
Austin, Texas 78759-8538
(w/o enclosures)

Ms. Claudia Langguth
Senior Vice President
Propel Consulting, Inc.
4113 Sequoia Trail East
Georgetown, Texas 78628
(w/o enclosures)

Mr. Esper Smith
Director of Business Operations
Software Engineering Services
Suite 100
1311 Fort Crook Road South
Bellevue, Nebraska 68005
(w/o enclosures)