



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2009

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

OR2009-16306

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# 361664 (OR-20090909-4640).

The Texas Health and Human Services Commission (the "commission") received three requests for responses to Request for Proposal number 529-10-0013 and information related to the commission's evaluation of these responses. You inform us that the commission has released some responsive information. Although the commission takes no position on release of the submitted information, you explain that this information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Outreach Health Services ("Outreach") and Texas Pregnancy Care Network ("TPCN") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered comments submitted by Outreach and have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from TPCN. Thus, TPCN

has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, the commission may not withhold any of the submitted information on the basis of any proprietary interest TPCN may have in it.

Outreach states that “we wish to keep our company’s financial statements confidential.” However, Outreach has not raised any exceptions against disclosure or otherwise explained why its financial statements are not subject to disclosure under the Act. Accordingly, the commission may not withhold any of the submitted information on the basis of any proprietary interest Outreach may have in it. *See* Gov’t Code § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6, 552 at 5, 542 at 3.

We note the submitted information contains insurance policy numbers. Section 552.136(b) 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.”<sup>1</sup> Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the commission must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.<sup>2</sup> The commission must release the remainder of the submitted information.

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

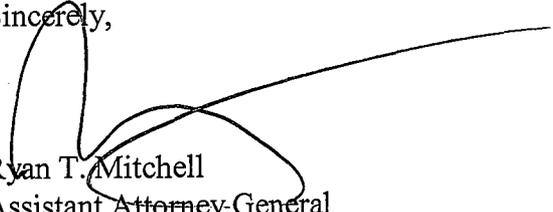
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note that the marked insurance policy numbers belong to one of the three requestors. This requestor has a right of access to its own section 552.136 information. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell  
Assistant Attorney-General  
Open Records Division

RTM/rl

Ref: ID# 361664

Enc. Submitted documents

cc: Requestors (3)  
(w/o enclosures)