



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

Ms. Dianne Florez
County Clerk
Reeves County
P.O. Box 867
Pecos, Texas 79772

OR2009-17251

Dear Ms. Florez:

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# 363401.

Reeves County (the "county") received a request for thirty-four categories of information. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.110, 552.111, 552.117, 552.1175, 552.125, 552.132, and 552.137 of the Government Code. You also indicate that release of some of the requested information may implicate the proprietary interests of GEO Group, Inc. ("GEO") and Physicians Network Association ("PNA"). Accordingly, pursuant to section 552.305 of the Government Code, the county has notified GEO and PNA of the request and of their 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered the exceptions you claim.

We must address the county's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2)

a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the county failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because the county has failed to comply with the requirements of the Act, the county has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the county also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Furthermore, we have not received comments from GEO or PNA explaining how release of the requested information pertaining to these two companies would affect their proprietary interests. *See* Gov't Code § 552.110; 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). Therefore, we conclude the county must release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 363401

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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