



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2010

Mr. Randall P. Gunter
Fielder & Gunter
310 Main Street
Liberty, Texas 77575

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2010-00628

Dear Mr. Gunter:

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# 367152.

The Hardin Water Supply Corporation ("Hardin"), which you represent, received a request for copies of specified balance sheets and income statements, as well as billing statements for multi-unit customers for a specified month. You state you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state you have marked information in the submitted documents that is outside the scope of the request. We note, however, that the requestor specifically requests meter numbers. Thus, we find the meter numbers in the submitted information are responsive to the request. Therefore, with the exception of the meter numbers, the information you have marked, in addition to the information we have marked, is not responsive to the present request. Hardin need not release nonresponsive information in response to this request, and this ruling will not address that 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 182.052 of the Utilities Code provides in relevant part the following:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

You state that the submitted information contains the personal information and utility consumption information of customers who timely requested confidentiality under section 182.052. You state none of the exceptions to confidentiality under section 182.054 apply in this instance and that the primary source of water for Hardin's utility services is not a sole-source designated aquifer. Based on your representations and our review of the submitted information, we agree that Hardin must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. However, the remaining responsive information does not consist of personal information in a customer's account record or information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage. Thus, this information is not confidential under section 182.052, and Hardin may not withhold any portion of it under section 552.101 on that basis.

We note the remaining information contains utility account numbers. Section 552.136(b) of the Government Code states "[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."¹ Gov't Code § 552.136(b). An

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

access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Therefore, Hardin must withhold the utility account numbers we have marked under section 552.136 of the Government Code.

In summary, Hardin must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Hardin must also withhold the information we marked under section 552.136 of the Government Code. The remaining responsive 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 367152

Enc. Submitted documents

c: Requestor
(w/o enclosures)

HISD must withhold portions of the information at issue in this suit, as agreed upon between the parties. The requestor was also informed of her right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of her intention to intervene, nor has a motion to intervene been filed.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

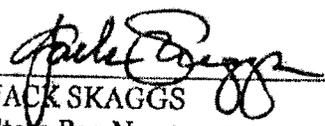
1. OptumRx, the Attorney General, and HISD have agreed that, in accordance with the PIA and under the facts presented, portions of the information at issue, as indicated by a redacted copy of the information at issue provided to HISD by the Attorney General and OptumRx, are excepted from disclosure pursuant to Tex. Gov't Code § 552.110(b) (hereinafter, the Excepted Information);
2. HISD must withhold the Excepted Information described in Paragraph 1 of this order, and release the remaining information at issue to the requestor;
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between OptumRx, the Attorney General, and HISD in this cause, and is a final judgment.

SIGNED this 2nd day of September, 2014.



JUDGE PRESIDING

AGREED:



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ATTORNEY FOR PLAINTIFF OPTUMRX, INC.
F/K/A RXSOLUTIONS, INC., D/B/A
PRESCRIPTION SOLUTIONS



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ATTORNEY FOR DEFENDANT GREG ABBOTT,
IN HIS CAPACITY AS ATTORNEY GENERAL OF
THE STATE OF TEXAS



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ATTORNEY FOR DEFENDANT HOUSTON
INDEPENDENT SCHOOL DISTRICT

CAUSE NO. D-1-GN-11-000335

OPTUMRX, INC. f/k/a RXSOLUTIONS, INC., d/b/a PRESCRIPTION SOLUTIONS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	126th JUDICIAL DISTRICT
	§	
GREG ABBOTT, in his capacity as ATTORNEY GENERAL OF THE STATE OF TEXAS, and HOUSTON INDEPENDENT SCHOOL DISTRICT,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Plaintiff OptumRx, Inc. f/k/a RxSolutions, Inc., d/b/a Prescription Solutions (“OptumRx”) and Defendants Greg Abbott, in his capacity as Attorney General of the State of Texas (the “Attorney General”), and Houston Independent School District (“HISD”). This Agreement is made on the terms set forth below.

BACKGROUND

On October 21, 2010, HISD received a request under the Public Information Act for bid proposals submitted to HISD in response to a specified request for proposals regarding a “Pharmacy Benefit Manager Services contract,” including a proposal submitted to HISD by OptumRx. HISD requested an open records ruling from the Attorney General pursuant to the PIA, Tex. Gov’t Code § 552.301. HISD also notified OptumRx, pursuant to Tex. Gov’t Code § 552.305, of OptumRx’s right to submit to the Attorney General reasons why any portion of the requested information pertaining to OptumRx should be withheld. OptumRx submitted briefing to the Attorney General asserting that some of the requested information was excepted from disclosure pursuant

to Tex. Gov't Code § 552.110. The Attorney General issued Open Records Letter Ruling OR2011-00628 (2011) in response to HISD's request. The ruling concluded, in relevant part, that a portion of the requested information pertaining to OptumRx must be withheld pursuant to Tex. Gov't Code § 552.110, but that remaining information pertaining to OptumRx was public and must be released.

OptumRx disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-11-000335, *OptumRx, Inc. f/k/a RxSolutions, Inc., d/b/a Prescription Solutions v. Greg Abbott, in his capacity as Attorney General of the State of Texas, and Houston Independent School District*, in the 126th Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. OptumRx provided notice of this lawsuit to requestor Ms. Aubriana Ard as required by Tex. Gov't Code § 552.325(b). Tex. Gov't Code § 552.325(c) allows the parties to enter into a settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Certain portions of the information at issue in this suit, consisting of commercial or financial information pertaining to OptumRx, are excepted from disclosure pursuant to Tex. Gov't Code § 552.110(b). On July 10, 2014, OptumRx provided the Attorney General with a marked copy of the information at issue that accurately indicates those portions of the information that the Attorney General and OptumRx have agreed shall be withheld pursuant to Tex. Gov't Code § 552.110(b)

(hereinafter, the "Excepted Information"). The information released by HISD to the requestor shall be redacted consistent with this copy.

2. HISD must withhold from the requestor the Excepted Information, as described in Paragraph 1 of this Agreement.

3. OptumRx, the Attorney General, and HISD agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the requestor.

4. The Attorney General agrees to notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of her right to intervene in this lawsuit, should she contest the withholding of the Excepted Information, as described in Paragraph 1 of this Agreement.

5. Should the requestor intervene in this lawsuit, a final judgment entered in this lawsuit will prevail over this Agreement, to the extent of any conflict.

6. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation.

7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. OptumRx warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all

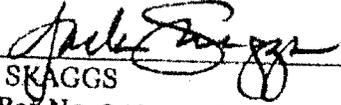
claims the parties have against each other arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement.

9. HISD warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement.

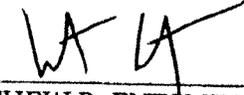
10. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned parties signs this Agreement.

OPTUMRX, INC. f/k/a RXSOLUTIONS,
INC., d/b/a PRESCRIPTION
SOLUTIONS

By: 
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Date: 7/28/14

GREG ABBOTT, in his capacity as
ATTORNEY GENERAL OF THE STATE
OF TEXAS

By: 
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Date: 8/7/14

HOUSTON INDEPENDENT SCHOOL
DISTRICT

By: 
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Date: 8/4/14

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Postal Product: Features: Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
August 11, 2014 , 12:53 pm	Delivered	SEATTLE, WA 98101
Your item was delivered at 12:53 pm on August 11, 2014 in SEATTLE, WA 98101.		
August 10, 2014 , 7:25 am	Departed USPS Facility	SEATTLE, WA 98168
August 9, 2014 , 11:02 pm	Arrived at USPS Facility	SEATTLE, WA 98168
August 8, 2014 , 8:30 pm	Departed USPS Facility	AUSTIN, TX 78710
August 8, 2014 , 7:55 pm	Arrived at USPS Facility	AUSTIN, TX 78710

Available Actions

Text Updates

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What's your tracking (or receipt) number?

LEGAL
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Terms of Use ›
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