



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2010

Ms. Caroline E. Cho
Assistant County Attorney
Williamson County Attorney's Office
405 MLK #7
Georgetown, Texas 78626

OR2010-00976

Dear Ms. Cho:

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# 367609.

Williamson County (the "county") received a request for a listing of all bidders, the prices submitted, and evaluation criteria scores for RFP# 10WCAP123, Employee Assistance Program and the top three proposals.¹ The county takes no position on whether the submitted information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of Deer Oaks Mental Health Services; McLaughlin Young Employee Services ("McLaughlin"); MHN Services; and Professional Assistance of Central Texas; (collectively, the "third parties"). Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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

¹We note that the requestor excluded from her request the requestor's company's proposal. Accordingly, only two of the top three proposals are responsive to this request.

certain circumstances). We have received comments from McLaughlin. We have considered the submitted comments and reviewed the submitted information.

Initially, we must address the county's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). In addition, pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office (1) 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. *Id.* § 552.301(e)(1)(A)-(D). You inform us that the county received the request at issue on October 15, 2009. Accordingly, the ten-business-day deadline was October 29, 2009, and the fifteen-business-day deadline was November 5, 2009. However, you did not request a ruling from this office or provide this office with the information required by section 552.301(e) until November 6, 2009. Accordingly, we find that the county failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the third parties.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from McLaughlin. We, thus, have no basis for concluding that any portion of the submitted information constitutes the other companies' proprietary information. *See id.* § 552.110; 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 county may not withhold any of the submitted information based on the proprietary interests of non-briefing third parties.

McLaughlin contends that its pricing information is excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5-6. Upon review of McLaughlin’s arguments and its information at issue, we find that McLaughlin has established that its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, the county must withhold the pricing information we have marked in McLaughlin’s information under section 552.110(b) of the Government Code. As no exceptions against the disclosure of the remaining information are raised, the remaining submitted information must be released to the requestor.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eeg

Ref: ID# 367609

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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