



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Ms. Diana Kongevick
Executive Director
Public Employee Benefit Cooperation of North Texas
P.O. Box 5888
Arlington, Texas 76005-5888

OR2010-01408

Dear Ms. Kongevick:

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# 368890.

The Public Employee Benefit Cooperation of North Texas (the "PEBC") received a request for the proposals submitted in response to, and any and all correspondence, documents, and evaluation notes pertaining to, a specified request for proposals. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you have notified the 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 to the requestor.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of a 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 that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Therefore, we have no basis to conclude that the third parties have a protected proprietary interest in the

¹The third parties are EyeMed Vision Care; United Healthcare Speciality Benefits; Superior Vision; VSP; HealthSmart; MetLife; and Humana Speciality Benefits (collectively "the third parties").

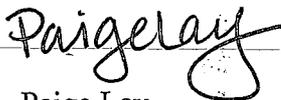
submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Although the PEBC also raises section 552.110 of the Government Code for the third parties' information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the PEBC's argument under section 552.110 for the submitted information. Accordingly, the PEBC may not withhold any portion of the submitted information on the basis of any proprietary interest the third parties may have in this information.

We note that some of the materials at issue appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the submitted information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 368890

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Ms. Dawn Richards
EyeMed Vision Care
400 Luxottica Place
Mason, Ohio 45040
(w/o enclosures)

Mr. James S. Shearer
United Healthcare Specialty Benefits
5800 Granite Parkway, Suite 820
Plano, Texas 75024
(w/o enclosures)

Ms. Diane Gervais
Humana Specialty Benefits
8111 LBJ Freeway, Suite 200
Dallas, Texas 75251
(w/o enclosures)

Ms. Kristi Lockwood
Superior Vision
11101 White Rock Road, Suite 150
Rancho, California 95670
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Ms. Kandi Alyousef-Garza
VSP
5700 Granite Parkway, Suite 455
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