



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2010

Ms. Nneka C. Egbuniwe
Deputy General Counsel
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2010-06756

Dear Ms. Egbuniwe:

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# 378899.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland") received a request for information provided to Parkland in response to a specified request for proposals.¹ Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of third parties. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, Parkland has notified Aetna Life Insurance Company ("Aetna") and United Healthcare ("United") of the request and of their right to submit arguments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received arguments from Aetna and United. We have considered the submitted arguments and reviewed the submitted information.

Initially, we and United note the requestor seeks information relating to claims projection or other assessment of unit cost (claim repricing), access or administrative fees, stop-loss terms

¹You provide documentation indicating Parkland sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

and fees, performance guarantees, wellness programs and benefits, and proposal evaluations, notes, and scoring. Therefore, any additional information is not responsive to the present request. Parkland need not release nonresponsive information in response to this request, and this ruling will not address such information.

Next, we note you have not submitted the requested proposal evaluations, notes, and scoring. We therefore assume, to the extent information responsive to this portion of the request existed when Parkland received the request for information, you have released it to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Aetna states it has agreed in its contracts to keep portions of its information confidential. We note information is not confidential under the Act simply because the party that submitted the information anticipated or requested that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Thus, Parkland may not withhold the information at issue unless it falls within the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary. *See* Open Records Decision No. 470 at 2 (1987).

Aetna raises section 552.110(b) of the Government Code for portions of its information. Section 552.110(b) protects the proprietary interests of private parties with respect to “commercial 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). Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Aetna contends that its discount and guarantee information constitutes proprietary information, the release of which would cause substantial and irreparable competitive harm, and requests that this information not be released. We note Aetna was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* FREEDOM OF INFORMATION ACT GUIDE & PRIVACY ACT OVERVIEW, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of

prices charged government is a cost of doing business with government). We therefore conclude Parkland may not withhold any of Aetna's information under section 552.110(b) of the Government Code.

As Aetna does not raise any additional arguments against disclosure of its responsive information and United does not raise any arguments against disclosure of its responsive information, we conclude the responsive information must be released in its entirety.

However, we note some of the submitted information appears 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 copyrighted. 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 copyrighted materials, 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).

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 378899

Enc. Submitted documents

- c: Requestor
(w/o enclosures)

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