



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 30, 2010

Ms. Connie Crawford
Assistant County Attorney
El Paso County Hospital District
4815 Alameda Avenue, 8th Floor, Suite B.
El Paso, Texas 79905

OR2010-11511

Dear Ms. Crawford:

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# 388603.

The El Paso County Hospital District (the "district") received a request for a 2008 contract with Cerner Corporation ("Cerner") for an electronic health record system and the proposals from all bidders that responded to a specified request for proposals. You indicate the district does not maintain information responsive to the part of the request seeking proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of Cerner. Accordingly, you state, and provide documentation showing, you notified Cerner of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 received comments from Cerner. We have considered the submitted arguments and reviewed the submitted information.

Cerner argues that a portion of the submitted information it has identified, labeled "Invoice No. EXEC Schedule No. 1. 1-3B5-2413," is not responsive to the request for information. We note a governmental body must make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at (1990) (construing

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

statutory predecessor). Upon review of the information Cerner has identified as non-responsive, we note that this information appears to be an attachment to an amendment to the requested contract. Accordingly, we conclude the district has made a good-faith effort to relate this request to responsive information. Therefore, we will determine whether the portions of information Cerner has identified may be withheld pursuant to the claimed exception against disclosure.

Cerner argues that the pricing information in the submitted information is excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[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. *See* Open Records Decision No. 661 at 5-6 (1999).

Upon review of Cerner’s arguments and the information at issue, we conclude that Cerner has not made the specific factual or evidentiary showing required by section 552.110(b) that release of its pricing information would cause Cerner substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). Further, we note that the pricing information contained in a contract with a governmental body, such as the contract at issue, is generally not excepted under section 552.110(b). 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). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). We therefore conclude that the district may not withhold any of the information at issue under section 552.110.

We note that portions of the submitted information are subject to section 552.136 of the Government Code.² Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected,

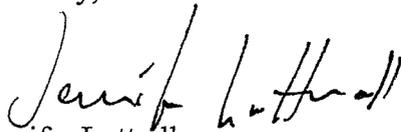
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find that the district must withhold the bank routing number and bank account number we have marked under section 552.136 of the Government Code.³ As no other exceptions have been raised, the remaining 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 388603

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Eric Gray
Corporate Counsel
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2800 Rockcreek Parkway
Kansas City, Missouri 64117
(w/o enclosures)

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.