



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 9, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-03275

Dear Mr. Bounds:

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# 410902.

The City of Corpus Christi (the "city") received a request for the proposals submitted in response to request for proposals #BI-0185-10 for the city's Employer-Sponsored Wellness Clinic. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, the city notified Care ATC, Inc. ("Care ATC"); Concerta Health Services, Inc. ("Concerta"); First Onsite LLC ("First Onsite"); Marathon Health, Inc. ("Marathon"); and HealthSmart Primary Care Clinics, LP ("HealthSmart") of the request for information and of each company's right to submit arguments to this office as to why its 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 reviewed the submitted information.

Initially, we note the proposals for Care ATC, Concerta, First Onsite, and Marathon were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-02160 (2011). In that ruling, we determined the city must (1) withhold the information we marked under sections 552.110(b) and 552.136 of the Government Code and (2) release the remaining information in accordance with copyright law. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on that ruling as a previous determination and withhold or release the proposals for Care ATC, Concerta, First Onsite, and Marathon in accordance with Open Records Letter No. 2011-02160. *See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was*

based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, because HealthSmart's proprietary interests were not at issue in Open Records Letter No. 2011-02160, we now consider the public availability of that company's proposal.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from HealthSmart explaining why the company's submitted proposal should not be released. Therefore, we have no basis to conclude HealthSmart has any protected proprietary interests in its 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). Accordingly, the city may not withhold any portion of HealthSmart's proposal based upon the proprietary interests of that company.

HealthSmart's proposal contains insurance policy numbers that are subject to section 552.136 of the Government Code.¹ 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, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.²

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).

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. Although the submitted information also contains insurance policy numbers that pertain to the requestor's client, the requestor has a right of access to such information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the city receives another request for this information, the city is authorized by Open Records Decision No. 684 to withhold the requestor's client's insurance policy numbers under section 552.136 of the Government Code without the necessity of requesting an attorney general decision.

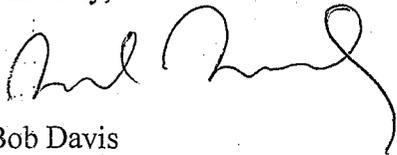
Finally, we note some of the remaining information in HealthSmart's proposal may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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.

In summary, the city must continue to rely on Open Records Letter No. 2011-02160 as a previous determination and withhold or release the proposals for Care ATC, Concerta, First Onsite, and Marathon in accordance with that ruling. The city must withhold the information we have marked in HeartSmart's proposal under section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 410902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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