



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2012

Ms. Bertha A. Ontiveros
Assistant City Attorney
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2012-00770

Dear Ms. Ontiveros:

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# 442862.

The City of El Paso (the "city") received a request for seven categories of information related to bidding by prospective providers of employee benefits. You state some of the requested information has been released. Although you take no position on the public availability of the rest of the requested information, you believe the remaining information may implicate the proprietary interests of Aetna, Inc. ("Aetna") and Medco Health Solutions, Inc. ("Medco"). You inform us Aetna and Medco were notified of this request for information and of their right to submit arguments to this office as to why the remaining information should not be released.¹ We have reviewed the submitted information.

We first note the city sent the requestor a written estimate of the cost of providing some of the requested information. *See* Gov't Code § 552.2615(a). You do not indicate whether the requestor has responded to the cost estimate. *See id.* § 552.2615(b). In any event, we have examined the submitted cost estimate and determined it does not comply with section 552.2615 of the Government Code. Thus, because the requestor has not received an estimate of the cost of providing the information that complies with section 552.2615, her request for information has not been withdrawn by operation of law, and the city must release the information encompassed by the cost estimate.

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We also note the requestor does not seek access to the tax identification and insurance policy numbers that have been redacted from the submitted documents. Thus, as the redacted information is not responsive to the request, this decision does not address its public availability, and it need not be released in response to the request.

We next note the city did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask this office for a decision and state any exceptions to disclosure it claims no later than the tenth business day after the date of the governmental body's receipt of the written request for information. *See id.* § 552.301(e)(1)(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *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).

You indicate the city received the present request for information on October 26, 2011; therefore, the city's ten-business-day deadline under section 552.301(b) was November 9. The city requested this decision by United States mail meter-marked November 10. *See* Gov't Code § 552.308(a) (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, because the city did not comply with section 552.301, the remaining responsive information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the city must withhold any of the information at issue to protect the interests of Aetna and Medco.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Aetna or Medco. Thus, because Aetna and Medco have not demonstrated any of the information at issue is proprietary for purposes of the Act, the city may not withhold any of the remaining responsive information on the basis of any interest Aetna or Medco may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note some of the submitted information appears to be subject to copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with

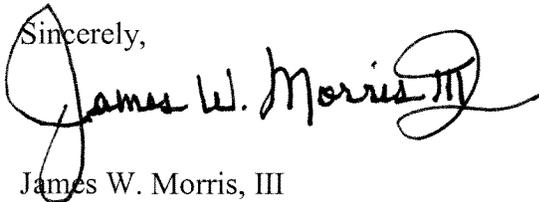
copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must release the remaining responsive information, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 442862

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Louie Heerwagen
Aetna, Inc.
P.O. Box 569440
Dallas, Texas 75356-9440
(w/o enclosures)

Mr. Stan Shults
Medco Health Solutions, Inc.
100 Parsons Pond Drive
Franklin Lakes, New Jersey 07417
(w/o enclosures)