



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2013

Mr. Andrew B. Thompson  
Assistant General Counsel  
Office of Legal Services  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2013-03253

Dear Mr. Thompson:

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# 479764.

The Corpus Christi Independent School District (the "district") received a request for "[i]nsurance consultant's spreadsheet of all group health insurance proposals received by the [district] during the recent [request for proposals] process" and certain e-mails and correspondence.<sup>1</sup> You state you will release some information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified the third parties of the request and the companies' rights to submit arguments to this office explaining why their information should not be released.<sup>2</sup> *See* Gov't Code § 552.305 (permitting interested third parties to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990)

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<sup>1</sup>You state the district received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a 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).

<sup>2</sup>The notified third parties are: Blue Cross Blue Shield of Texas; Group & Pension Administrators, Inc.; Humana; Mutual Assurance Administrators, Inc.; UnitedHealthcare, and Wortham Insurance & Risk Management.

(determining 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 comments submitted by representatives of Blue Cross Blue Shield of Texas ("BCBS") and UnitedHealthcare ("United"). BCBS states the company does not object to release of its information. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from United. Thus, the remaining third parties have not demonstrated the companies have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)–(b); 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. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

United claims section 552.110 of the Government Code for portions of its information. Section 552.110(b) protects "[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. *Id.*; ORD 661.

United contends some of its information is commercial or financial information, release of which would cause substantial competitive harm to the company. Upon review, we find United has established the information at issue constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, the district must withhold the information we have marked under section 552.110(b) of the Government Code.<sup>3</sup>

We note some of the submitted information may be protected by 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

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<sup>3</sup>As our ruling is dispositive, we need not address United's remaining argument against disclosure of this information.

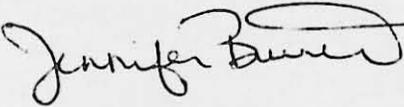
materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we have marked under section 552.110 of the Government Code. The district must release the remaining information but any information subject to copyright only may 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](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 Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 479764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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