



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2014

Mr. Timothy E. Bray
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2014-12395

Dear Mr. Bray:

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# 529358 (DSHS File No. 22692/2014).

The Department of State Health Services (the "department") received a request for information regarding a specified request for proposals.¹ You state the department released some information to the requestor. Although you take no position regarding the release of the submitted information, you state the release of the submitted information may implicate the proprietary interests of Clearwater Research, Inc. ("Clearwater"). Accordingly, you inform us, and provide documentation showing, you notified Clearwater of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *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 Clearwater. We have considered the submitted arguments and reviewed the submitted information.

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Clearwater contends portions of its information are excepted under section 552.110(b) of the Government Code. 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.*; *see also* Open Records Decision No. 661 at 5 (1999).

Upon review, we find Clearwater has not established the release of any of its information would result in substantial harm to its competitive position. *See* Open Records Decision No. 319 at 2 (1982) (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Furthermore, we note the pricing information of a winning bidder, such as Clearwater, 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. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, the department may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/tch

Ref: ID# 529358

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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