



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Maureen Franz
Deputy Chief Counsel
Texas Health and Human Services Commission
P. O. Box 13247
Austin, Texas 78711

OR2015-16643

Dear Ms. Franz:

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# 575028.

The Texas Health and Human Services Commission (the "commission") received a request for a copy of a specified proposal. You state the commission will release some information. 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 GEO Care, LLC ("GEO Care"). Accordingly, you state you notified GEO Care of the request for information and of its right to submit arguments to this office as to why the information at issue 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 GEO Care. We have considered the submitted arguments and reviewed the submitted information.

GEO Care claims the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas

Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See Open Records Decision No. 552 at 5 (1997)*. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *Open Records Decision No. 402 (1983)*. We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business."

¹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980)*.

RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

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 (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).

GEO Care argues the submitted information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find the information we have marked consists of commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we have marked under section 552.110(b) of the Government Code.² However, we find GEO Care has failed to demonstrate release of any of the remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Therefore, the commission may not withhold any of the remaining information under section 552.110(b) of the Government Code.

GEO Care also asserts the submitted information constitutes trade secrets under section 552.110(a) of the Government Code. However, upon review, we conclude GEO Care has failed to demonstrate the applicability of 552.110(a) to any of the remaining information. *See* ORDs 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing not ordinarily excepted from disclosure under

²As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

statutory predecessor to section 552.110). Therefore, none of the remaining information may be withheld under section 552.110(a) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], 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.”³ Gov’t Code § 552.136(b); see *id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. See Open Records Decision No. 684 at 9 (2009). Accordingly, the commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

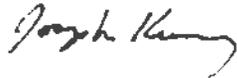
In summary, the commission must withhold the information we marked under section 552.110(b) of the Government Code. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The commission must release the remaining 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 575028

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. James G. Healy
CCS
1283 Murfreesboro Road, Suite 500
Nashville, Tennessee 37217
(w/o enclosures)

SEP 07 2016

At 3:13 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-003549

GEO CARE, LLC
Plaintiff,

v.

**KEN PAXTON, Attorney General
of the State of Texas, and
THE TEXAS HEALTH AND HUMAN
SERVICES COMMISSION,**
Defendants.

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IN THE DISTRICT COURT

98th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiff Correct Care, LLC, formerly known as GEO Care, LLC and as GEO Care, Inc. (GEO), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, GEO, and Defendants, the Texas Health and Human Services Commission (HHSC) and Ken Paxton, Attorney General of Texas (the Attorney General), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A," and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Andrea Ball, on August 15, 2016, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that HHSC must withhold the information described



below. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. Confirmation of the certified mailing is attached to this judgment as Exhibit "B."

The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment disposing of all claims between these parties is appropriate.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Portions of the information at issue, specifically the 2014 Comprehensive Compliance Plan of GEO for the South Florida State Hospital, are confidential pursuant to Texas Government Code section 552.101 in conjunction with Texas Health and Safety Code § 161.032.
2. Portions of the information at issue, specifically the 2014 Corporate Compliance Program of GEO Care, are confidential pursuant to Texas Government Code section 552.1110.
3. HHSC must withhold from the requestor the information described in Paragraphs 1 and 2 of this order.
4. All court costs and attorney fees are taxed against the parties incurring the same;
5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between GEO, HHSC, and the Attorney General and is a final judgment.

SIGNED the 7th day of Sept., 2016.

X Judge Presiding

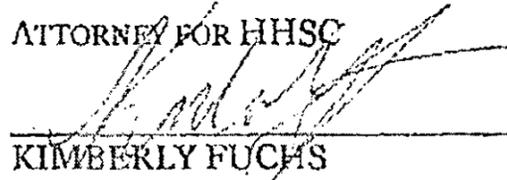
PRESIDING JUDGE

AGREED:



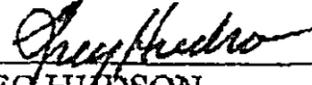
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ATTORNEY FOR HHSC



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ATTORNEY FOR THE ATTORNEY GENERAL.



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(512) 441-1501 (fax)
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ATTORNEY FOR PLAINTIFF

A

CAUSE NO. D-1-GN-15-003549

GEO CARE, LLC
Plaintiff,

v.

KEN PAXTON, Attorney General
of the State of Texas, and
THE TEXAS HEALTH AND HUMAN
SERVICES COMMISSION,
Defendants.

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IN THE DISTRICT COURT

98th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Correct Care, LLC, formerly known as GEO Care, LLC and as GEO Care Inc. (GEO) and Defendants the Texas Health and Human Services Commission (HHSC) and Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

HHSC received a written request for information from Ms. Andrea Ball under the Public Information Act (PIA). The request was for a specified bid for a contract submitted to HHSC by GEO. The responsive information included the bid proposal as well as attachments to the bid, which contained information regarding GEO's work under other contracts.

HHSC asked for an open records ruling from the Attorney General, pursuant to Texas Government Code section 552.301.

The Attorney General issued Letter Ruling OR2015-16643 in response to HHSC's

request. The ruling concluded that the information at issue must be disclosed to the requestor.

GEO disputed the ruling and filed this lawsuit to preserve its rights under the PIA. GEO has now agreed to release much of the information covered by the request, but continues to challenge the release of a portion of the information, consisting of: 1) the 2014 Comprehensive Compliance Plan of GEO for the South Florida State Hospital; and 2) the 2014 Corporate Compliance Program of GEO.

GEO submitted additional information to the Attorney General arguing that Texas Government Code section 552.101 in conjunction with section 161.032 of the Texas Health and Safety Code makes the first category of information confidential and Texas Government Code section 552.110 makes the second category of information confidential. After reviewing the additional arguments, the Attorney General now agrees that GEO has established that both of those sections do apply to the identified information. Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Portions of the information at issue, specifically the 2014 Comprehensive Compliance Plan of GEO for the South Florida State Hospital, are confidential pursuant to Texas Government Code section 552.101 in

conjunction with Texas Health and Safety Code § 161.032.

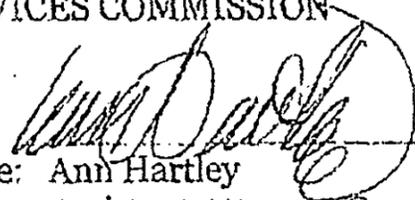
2. Portions of the information at issue, specifically the 2014 Corporate Compliance Program of GEO, are confidential pursuant to Texas Government Code section 552.1110.
3. HHSC must withhold from the requestor the information described in Paragraphs 1 and 2 of this Agreement.
4. GEO, HHSC, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A".
5. The Attorney General agrees that, as required by Tex. Gov't Code § 552.325(c), he will also notify the requestor of the proposed settlement and of her right to intervene to contest GEO's right to have the information withheld.
6. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
7. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.
8. The terms of this Agreement are contractual and not mere recitals, and the

agreements made herein and the mutual consideration transferred are to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

9. GEO warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that GEO has against the Attorney General and HHSC arising out of the matters described in this Agreement.
10. HHSC warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that HHSC has against the Attorney General and GEO arising out of the matters described in this Agreement.
11. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against GEO and HHSC arising out of the matters described in this Agreement.

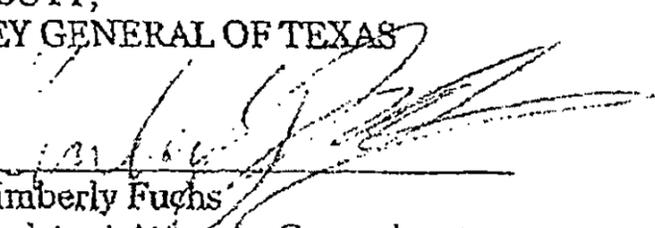
12. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

By: 
Name: Ann Hartley
Title: Assistant Attorney General,
Financial Litigation and
Charitable Trusts Division

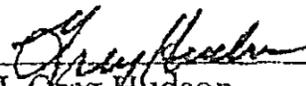
Date: 8/12/16

GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS

By: 
Name: Kimberly Fuchs
Title: Assistant Attorney General,
Administrative Law Division

Date: 8/12/16

CORRECT CARE, LLC, f/k/a GEO CARE,
LLC AND AS GEO CARE, INC.

By: 
Name: J. Greg Hudson
Firm: Hudson & O'Leary L.L.P

Date: 8/12/16