



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 31, 2016

Mr. Ricardo R. Lopez  
Counsel for the North East Independent School District  
Schulman, Lopez, Hoffer, & Adelstein, L.L.P.  
517 Soledad Street  
San Antonio, Texas 78205-1508

OR2016-07228

Dear Mr. Lopez:

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# 603976.

The North East Independent School District (the "district"), which you represent, received two requests for proposals and evaluation information pertaining to a request for proposals for the district's employee assistance program. You state the district has released some of the requested 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 third parties. Accordingly, you state, and provide documentation showing, you notified Beacon Health Options ("Beacon") and MHN Services of the request for information and of their right to submit arguments to this office as to why the 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). The district has submitted comments from Beacon and MHN. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) of the Government Code 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) at 5 (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).

Beacon and MHN argue portions of their information consist of commercial and financial information, the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code.<sup>1</sup> Upon review, we find Beacon and MHN have demonstrated the information we have marked, including Beacon’s and MHN’s client information, consists of commercial or financial information, the disclosure of which would cause the companies substantial competitive harm. Thus, the district must withhold the information we have marked under section 552.110(b); however, to the extent the client information is publicly available on Beacon’s or MHN’s website, the district may not withhold such information under section 552.110(b). However, we find Beacon and MHN have not demonstrated the release of their remaining information would result in substantial harm to their competitive positions. *See* Open Records Decision Nos. 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, none of the remaining information may be withheld under section 552.110(b) of the Government Code. As no further exceptions to disclosure have been raised, the remaining information must be released.

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.

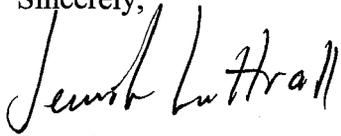
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>We understand Beacon and MHN to raise section 552.110(b) of the Government Code based on their arguments.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 603976

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Mr. Stefan Van Doren  
Beacon Health Options  
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