



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2016

Mr. Vince Ryan
Assistant County Attorney
Harris County Attorney
2525 Holy Hall, Suite 190
Houston, Texas 77054

OR2016-26478

Dear Mr. Ryan:

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# 635876.

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for all performance evaluations and all information pertaining to disciplinary actions relating to a named individual. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state the proprietary interests of a third party might be implicated. Accordingly, you state you notified CIGNA Group Insurance ("CIGNA") of the request for information and of its 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). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from CIGNA explaining why its information should not be released

to the requestor. Therefore, we have no basis to conclude CIGNA has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the system may not withhold any portion of the submitted information on the basis of any proprietary interest CIGNA may have in the information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). The system claims CIGNA’s federal tax identification number consists of tax return information. Upon review, however, we find the federal tax identification number does not fall within the definition of tax return information. *See* 26 U.S.C. § 6103(b)(2)(A). Accordingly, the system may not withhold that information under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. As no other exceptions to disclosure have been raised, the system must release the submitted information in its entirety.¹

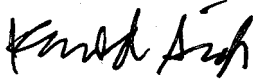
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹We note the requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the system receives another request for this information from a different requestor, then the system should again seek a ruling from this office.

[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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 635876

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)