



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2017

Mr. Colin Brock
Legal Assistant
Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2017-00367

Dear Mr. Brock:

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# 640864.

The Legislative Budget Board (the "board") received a request for the most recent twelve month period Quality Assurance Team ("QAT") and Biennial Operating Plan ("BOP") documents submitted to the board by eight specified agencies. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the Department of State Health Services ("DSHS"); the Department of Family and Protective Services ("DFPS"); the Office of the Attorney General ("OAG"); the Health and Human Services Commission ("HHSC"); the Department of Public Safety ("DPS"); the Texas Department of Insurance ("TDI"); the Teacher Retirement System ("TRS"); and the Employee Retirement System ("ERS"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why their 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 received

comments from DSHS, DFPS, and HHSC.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2016-26614 (2016) and 2016-27447 (2016). In Open Records Letter No. 2016-26614, we determined the board may withhold the information HHSC indicated under section 552.104(a) of the Government Code, and must release the remaining information.² In Open Records Letter No. 2016-27447, we determined the board must release the requested information.³ We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the board may continue to rely on Open Records Letter Nos. 2016-26614 and 2016-27447 as previous determinations and withhold or release the information previously ruled upon in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).⁴

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 ruling, we have not received comments from OAG, DPS, TDI, TRS, or ERS. Thus, we have no basis to conclude any of these third parties has a protected proprietary interest in 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 board may not withhold any of the submitted information on the basis of any proprietary interest OAG, DPS, TDI, TRS, or ERS may have in the information. As no further exceptions to disclosure have been raised, the board must release the submitted information not subject to Open Records Letter Nos. 2016-26614 and 2016-27447.

¹We note DSHS and DFPS do not object to the release of the information at issue.

²We note in that ruling, OAG did not object to the release of its BOP documents, which are at issue in this request.

³We note in that ruling, DFPS did not object to the release of its BOP documents, which are at issue in this request.

⁴As we are able to make this determination, we need not address HHSC's arguments against disclosure of the information at issue.

In summary, the board may continue to rely on Open Records Letter Nos. 2016-26614 and 2016-27447 as previous determinations and withhold or release the information previously ruled upon in accordance with those rulings. The board must release the information not subject to Open Records Letter Nos. 2016-26614 and 2016-27447.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 640864

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)