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ATTORNEY GENERAL OF TEXAS

August 29, 2016

Mr. David Wheelus
Open Records Attorney
Office of Agency Counsel
Legal Section, General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-19522

Dear Mr. Wheelus:

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# 624452 (TDI 173827).

The Texas Department of Insurance (the "department") received a request for current personal auto territory definitions for Home State County Mutual Insurance Company ("Home State"). The department states it will release some information. Although the department takes no position as to whether the submitted information is excepted under the Act, the department informs us release of this information may implicate the proprietary interests of Home State. Accordingly, the department states, and provides documentation showing, it notified Home State 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 Home State. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or

competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Home State states it has competitors. In addition, Home State states the release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Home State has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have indicated under section 552.104(a) of the Government Code.¹ 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 624452

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address Home State's remaining argument against disclosure.