



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2016

Mr. Stanton Strickland
Deputy Commissioner
Legal Division
Texas Department of Insurance
Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-25794

Dear Mr. Strickland:

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# 634967.

The Texas Department of Insurance (the "department") received a request for a specified application for rate increase. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of John Hancock Life Insurance Company ("John Hancock"). Accordingly, you state you notified John Hancock 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 John Hancock. We have reviewed the submitted information and considered the submitted arguments.

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. John Hancock states it has competitors. In addition, John Hancock states release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find John Hancock 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 submitted information under section 552.104(a).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/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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 634967

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.