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ATTORNEY GENERAL OF TEXAS

December 19, 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

OR2016-28036

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# 639866.

The Texas Department of Insurance (the "department") received a request for specified information pertaining to Blue Cross Blue Shield of Texas ("BCBS"). The department does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the department states, and provides documentation showing, it notified BCBS of the department's receipt of the request for information and of BCBS's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 BCBS objecting to the release of some of the information at issue. We have considered the claimed exceptions 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, 841 (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.* BCBS states it has competitors and argues release of the information it has indicated would cause it substantial competitive harm. Upon review, we find BCBS 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 that BCBS has indicated under section 552.104(a) of the Government Code.¹ The department must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 639866

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we do not address the other arguments to withhold this information.