



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2017

Mr. David Wheelus
Open Records Attorney
Office of Agency Counsel
Texas Department of Insurance
Legal Counsel, MC 110-1C
P.O. Box 149104
Austin, Texas 78714-9104

OR2017-03442

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# 645801 (TDI #177895).

The Texas Department of Insurance (the "department") received a request for specified property and casualty filings.¹ You state you are releasing some information. 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 Farmers Insurance Company ("Farmers"), Redpoint County Mutual Insurance Company ("Redpoint"), and Travelers Insurance Company ("Travelers"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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

¹You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the department received the required deposit on November 18, 2016. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

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 Farmers. We have reviewed the submitted information and the submitted arguments.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Redpoint or Travelers explaining why the submitted information should not be released. Therefore, we have no basis to conclude Redpoint or Travelers has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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 department may not withhold the submitted information on the basis of any proprietary interest Redpoint or Travelers may have in the 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. Farmers states it has competitors. In addition, Farmers states release of the information at issue would allow its competitors "to undercut Farmers' pricing, rates, and practices to capture . . . new business and increase their market share in the [insurance] industry." After review of the information at issue and consideration of the arguments, we find Farmers 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 indicated under section 552.104(a) of the Government Code.² The department must release the remaining information.

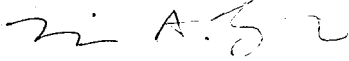
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we need not address Farmers' remaining argument against disclosure of the information at issue.

[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,



Nicholas Ybarra
Assistant Attorney General
Open Records Division

NY/sb

Ref: ID# 645801

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)