



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2017

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

OR2017-04809

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# 648257 (TDI# 179295).

The Texas Department of Insurance (the "department") received a request for a named company's small group and large group health insurance rate filings for a specified time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the interests of a specified third party. Accordingly, you inform us, and provide documentation demonstrating, you notified Blue Cross and Blue Shield of Texas ("BCBS") of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from BCBS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Gov't Code § 552.101. Section 552.101 encompasses section 1501.215 of the Insurance Code, which provides:

(a) Annually, each small employer health benefit plan issuer that offers a small employer health benefit plan shall file with the commissioner an actuarial certification stating that the issuer's underwriting and rating methods:

- (1) comply with accepted actuarial practices;
- (2) are uniformly applied to each small employer health benefit plan covering a small employer; and
- (3) comply with this subchapter.

(b) Each small employer health benefit plan issuer shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based on commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(c) A small employer health benefit plan issuer shall make the information and documentation described in Subsection (b) available to the commissioner on request. Unless the information or documentation relates to a violation of this chapter, the information or documentation is considered proprietary and trade secret information and is not subject to disclosure by the commissioner to a person outside the department except as agreed to by the issuer or as ordered by a court.

Ins. Code § 1501.215. The department explains some of the submitted information consists of information subject to section 1501.215(c). The department explains the information you have indicated consists of rating practices and renewal underwriting practices submitted to the department by a small employer insurance issuer. We understand the information at issue consists of documentation submitted to the department in order to obtain approval for this issuer's rate increases. You also state the exception for violations of this chapter does not apply in this instance. Based on your representations and our review, we agree the information you have indicated is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1501.215(c) of the Insurance Code, and must be withheld on this basis.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

BCBS claims some of the remaining information is excepted from disclosure under section 552.104 of the Government Code. 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. BCBS states it has competitors. In addition, BCBS argues release of the information at issue would cause it substantial competitive harm. After review of the information at issue and consideration of the arguments, 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 BCBS has marked under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, the department must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 1501.215 of the Insurance Code. The department may withhold the information BCBS has marked under section 552.104(a) of the Government Code. 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](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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/sb

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 648257

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)