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ATTORNEY GENERAL OF TEXAS

May 24, 2017

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

OR2017-11362

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# 659273 (TDI Nos. 181888 and 182351).

The Texas Department of Insurance (the "department") received two requests from different requestors for information pertaining to rate filings of Genworth Life Insurance Company ("Genworth"). The department states it is releasing some information to the second requestor in accordance with Open Records Letter No. 2016-17174 (2016). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The department states release of the submitted information may implicate the proprietary interests of Genworth. Accordingly, the department states, and provides documentation showing, it notified Genworth of the requests for information and of its 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 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 Genworth. We have reviewed the submitted information and the submitted arguments.

Genworth states its information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

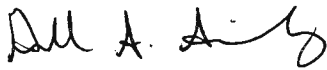
Genworth explains release of portions of its actuarial memorandums would cause the company substantial competitive harm. Genworth explains the information at issue reveals its actuarial formulas, statistics, and assumptions, and the release of the information would allow competitors to use this information to underprice the company. Genworth further explains that it has uniquely developed its long-term care insurance products and pricing data based on its experience in the field, and divulging this information to its competitors would allow them to offer the same level of service without incurring the same expenses that Genworth has incurred. It also explained the information at issue has remained confidential. Upon review, we find Genworth has made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its information at issue would cause substantial competitive harm. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the department must withhold the information Genworth has marked under section 552.110(b) 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.

¹As our ruling is dispositive, we need not address Genworth's remaining argument under section 552.110(a) of the Government Code.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 659273

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)