



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Mr. David Wheelus
Public Information Coordinator
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2017-18732

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# 671148 (TDI# 184838).

The Texas Department of Insurance (the "department") received a request for rate increase histories related to two named third parties. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Blue Cross Blue Shield of Texas ("BCBS"). Accordingly, you state, and provide documentation showing, you notified BCBS 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 arguments from BCBS. We have considered the submitted arguments and reviewed the submitted information.

You state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-28014 (2016), 2016-14850 (2016), and 2012-00711 (2012). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, we conclude the department must continue to rely on Open Records Letter

Nos. 2016-28014, 2016-14850, and 2012-00711 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address the submitted arguments against disclosure of the submitted information, which is not subject to the previous determinations.

BCBS asserts the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, the court concluded 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 states the information at issue, if released, would give its competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find BCBS has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a) of the Government Code.¹

In summary, the department must continue to rely on Open Records Letter Nos. 2016-28014, 2016-14850, and 2012-00711 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the submitted information under section 552.104(a) of the Government Code.

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

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 671148

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)