



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2017

Ms. Tracey Beaver
Chief Clerk and Assistant General Counsel
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2017-22977

Dear Ms. Beaver:

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# 679884 (TDI# 186299).

The Texas Department of Insurance (the "department") received a request for information pertaining to the largest providers of specific Medicare plans during a certain time period. The department has released some information to the requestor. 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 Blue Cross Blue Shield of Texas ("Blue Cross"), Humana Insurance Company ("Humana"), and USAA Life Insurance Company ("USAA"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights 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 Blue Cross and Humana. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-14850 (2016). In that ruling, we determined the department (1) must continue to rely on Open

Records Letter No. 2016-05873 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling, (2) may withhold certain information under section 552.104 of the Government Code, (3) must withhold certain information under sections 552.110 and 552.137 of the Government Code, and (4) must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2016-14850 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from USAA. Thus, we have no basis to conclude USAA has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest USAA 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. Blue Cross and Humana state they have competitors. Blue Cross states release of its information would reveal key business details about internal operations and provide competitors an unfair advantage. In addition, Humana states release of its information at issue would allow its competitors to copy Humana and adjust their business methods which would give them an advantage over Humana. After review of the information at issue and consideration of the arguments, we find Blue Cross and Humana have 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 marked under section 552.104(a) of the Government Code.¹

In summary, the department may continue to rely on Open Records Letter No. 2016-14850 as a previous determination and withhold or release the information at issue in accordance with that ruling. The department may withhold the information we 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, 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 679884

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address Blue Cross's remaining arguments against disclosure.