



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2017

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

OR2017-23932

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# 680788 (TDI# 187000).

The Texas Department of Insurance (the "department") received a request for information pertaining to four specified rate filings. Although you take no position with respect to the public availability of the submitted information, you indicate release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you notified Consumers County Mutual Insurance Company ("Consumers") and Farmers Texas Mutual Insurance Company ("Farmers") of the request and of their right to submit arguments to this office explaining why the information at issue 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); *see also* 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 Farmers. We have considered the submitted arguments and reviewed the submitted information.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Consumer explaining why the submitted information should not be released. Therefore, we have no basis to conclude Consumer 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 Consumer may have in the information.

Section 552.104(a) of the Government Code exempts 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 informs us it has competitors. In addition, Farmers states release of its confidential information would significantly harm its ability to compete in the Texas market because competitors would know how it does business, how it targets markets, and how it underwrites new business and calculates premium rates. 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 Farmer's information under section 552.104(a) of the Government Code.<sup>1</sup> 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/>

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

[ori\\_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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 680788

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: 2 Third Parties  
(w/o enclosures)