



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2017

Mr. David Wheelus
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104, MC 110-1C
Austin, Texas 78714-9104

OR2017-28751

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# 689022 (TDI# 188705).

The Texas Department of Insurance (the "department") received a request for approved 2018 individual off-exchange, non-grandfathered health insurance rate filings.¹ You state the department will release some of the requested information. 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 Celtic Insurance Company ("Celtic"), CHRISTUS Health Plan ("CHRISTUS"), and Freedom Life Insurance Co. of America ("Freedom"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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

¹You inform us the requestor has withdrawn her request as it pertains to SHA, LLC d/b/a FirstCare.

comments from Celtic and Freedom. We have considered the submitted arguments and reviewed the submitted information.

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 CHRISTUS. Thus, we have no basis to conclude CHRISTUS 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 CHRISTUS 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. Celtic and Freedom state they have competitors. Celtic states release of its information at issue would provide insights into its business and pricing strategies and undermine Celtic's position in the marketplace. In addition, Freedom states release of its information at issue would allow its competitors to undercut Freedom's prices and gain a competitive edge over Freedom. After review of the information at issue and consideration of the arguments, we find Celtic and Freedom have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information pertaining to Celtic and to Freedom under section 552.104(a) of the Government Code.² As no further exceptions to disclosure have been raised, 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/>

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

[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# 689022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)