



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2019

Mr. Sid Pounds
Open Records Attorney
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2019-08241A

Dear Mr. Pounds:

This office issued Open Records Letter No. 2019-08241 (2019) to the Texas Department of Insurance (the "department") on March 26, 2019. Since that date, the department has submitted additional information that implicates the proprietary interests of a third party. Consequently, this decision is substituted for Open Records Letter No. 2019-08241 and serves as the correct ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 775706.

The department received a request for information pertaining to specified filings made by named entities.¹ We understand you released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of the submitted information may implicate the proprietary interests of Home State County Mutual Insurance Company (“Home State”) and Old American County Mutual Fire Insurance Company (“Old American”).² Accordingly, you state, and provide documentation showing, you notified Home State and Old American 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 id.* § 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 Home State. We have reviewed the submitted information and considered the submitted arguments.

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 Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Old American explaining why the submitted information should not be released. Therefore, we have no basis to conclude Old American 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 Old American 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. Home State states it has competitors. In addition, Home State states release of the information at issue would cause substantial competitive harm to Home State. After review of the information at issue and consideration of the arguments, we find Home State has 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

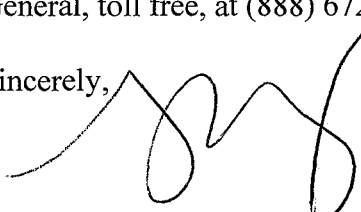
²We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See Gov’t Code* § 552.301(b). Nonetheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

marked under section 552.104(a) of the Government Code.³ 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 775706

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

³As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.