



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2019

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

OR2019-26046A

Dear Mr. Pounds:

Our office issued Open Records Letter No. 2019-26046 (2019) on September 17, 2019. Since that time, we have received new information that affects the facts on which the prior ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on September 17, 2019. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 804138 (TDI #R004847).

The Texas Department of Insurance (the "department") received a request for a specified personal auto rate filing. You state the department has released some 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 Progressive County Mutual Insurance Company ("Progressive"). Accordingly, you state, and provide documentation showing, the department notified Progressive of the request for information and of its 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 Progressive. We have considered the submitted arguments and reviewed the submitted 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). 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, 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. Progressive states it has competitors. In addition, Progressive states release of portions of its information at issue would allow its competitors to duplicate Progressive’s method of underwriting and target certain segments of the market in order to place Progressive’s competitors at a substantial competitive advantage. After review of the information and consideration of the arguments, we find Progressive has established the release of the information it indicated would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information Progressive indicated under section 552.104(a) of the Government Code.¹ 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 804138

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address Progressive’s remaining arguments against disclosure of this information.