



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2019

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

OR2019-35235

Dear Mr. Pounds:

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# 801198 (TDI# R005589).

The Texas Department of Insurance (the "department") received a request for twelve categories of information pertaining to certain PPO and HMO plans.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Blue Cross Blue Shield of Texas ("BCBS"). Accordingly, you state, and provide documentation showing, you notified BCBS of the request and its right to submit arguments to this office. *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 BCBS. We have reviewed the submitted arguments and 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

¹ The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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. BCBS states it has competitors. In addition, BCBS states release of the information it indicated would reveal key details about its provider network and provide their competitors with an unfair advantage over BCBS in future bidding processes. After review of the information at issue and consideration of the arguments, we find BCBS 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 indicated information under section 552.104(a).²

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 801198

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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