



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2020

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

OR2020-00556

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# 804942 (ORR R006048).

The Texas Department of Insurance (the "department") received a request for rate information on Medicare supplements from a named company and the rate history on Medicare plans F, G, and N for every carrier.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 this information 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 for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records

¹ We note the department asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 arguments from BCBS. We have considered the submitted arguments and reviewed the submitted information.

You state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-18732 (2017), 2016-28014 (2016), 2016-14850 (2016), 2012-00711 (2012), and 2012-00435 (2012). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, we conclude the department must continue to rely on Open Records Letter Nos. 2017-18732, 2016-28014, 2016-14850, 2012-00711, and 2012-00435 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address the submitted arguments against disclosure of the submitted information, which is not subject to the previous determinations.

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. BCBS states it has competitors. In addition, BCBS states the information at issue, if released, would give its competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find BCBS has established the release of the information it seeks to withhold would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we marked under section 552.104(a) of the Government Code.² 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.

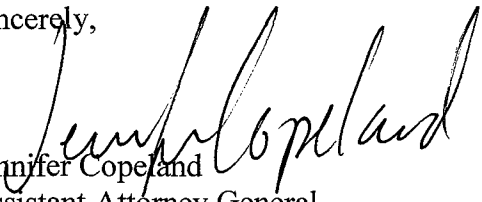
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² As our ruling is dispositive, we need not address the remaining arguments against release of this information.

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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,



Jennifer Cope land
Assistant Attorney General
Open Records Division

JC/rm

Ref: ID# 804942

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosure)