



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2020

Mr. Sid Pounds
Public Information Coordinator
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2020-02861

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# 809155 (TDI# R006356).

The Texas Department Insurance (the "department") received a request for four categories of information pertaining to department actions and a named individual. You state you will release some of the requested information. You also state you will redact e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).¹ You claim the submitted information is privileged pursuant to Texas Rule Evidence 503 and Texas Rule of Civil Procedure 192.5. Additionally, you state release of this information may implicate the proprietary interests of Molina Healthcare of Texas, Inc. ("Molina"). Accordingly, you state, and provide documentation showing, you notified Molina 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 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 Molina. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

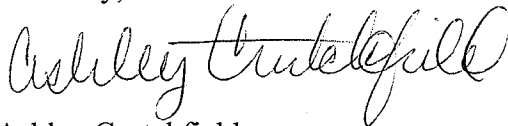
¹ Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Molina asserts the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Molina states it has competitors. In addition, Molina states the information at issue, if released, would “significantly harm Molina and advantage its direct competitors.” After review of the information at issue and consideration of the arguments, we find Molina has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a) of the Government Code.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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/be

Ref: ID# 809155

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

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