



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2020

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-03577

Dear Mr. Miles:

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# 810616 (HHSC ORR Ref. No. 20276).

The Texas Health and Human Services Commission (the "commission") received a request for specified market share percentages. Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of the submitted information may implicate the proprietary interests of UnitedHealthcare ("United"). Accordingly, the commission states it notified United 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.¹ *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 reviewed the submitted information.

Initially, we note the requestor seeks only the specified market share percentages. The commission has submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the commission is not required to release that information in response to the request.

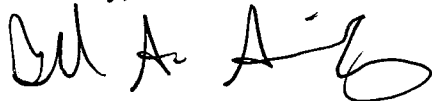
¹ We note, and the commission acknowledges, it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, as the interests of a third party can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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 United explaining why the responsive information should not be released. Accordingly, we have no basis to conclude United has a protected proprietary interest in the responsive information, and the commission may not withhold any portion of it on that basis. *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 commission must release the responsive 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,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 810616

Enc. Submitted documents

c: Requestor
(w/o enclosures)