



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

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

OR2020-08535

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# 817077 (TDI# R006546).

The Texas Department of Insurance (the "department") received a request for information pertaining to specified operational reviews of certain companies during the last five years.¹ You state you have 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 Centene Corporation Affiliates ("Centene") d/b/a Superior HealthPlan, Inc. and Celtic Insurance Company.² Accordingly,

¹ We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977).

you state, and provide documentation showing, the department notified Centene 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* 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 Centene. We have considered the submitted arguments and reviewed the submitted information.

Initially, Centene asserts, and we agree, some of the submitted information, which we indicated, is not responsive to the instant request because it does not pertain to the companies at issue. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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. Centene states it has competitors. In addition, Centene states release of the information at issue would cause substantial competitive harm to the company. After review of the information at issue and consideration of the arguments, we find Centene 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 responsive information under section 552.104(a) of the Government Code.³

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

Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the department's violation of section 552.301 in requesting this decision.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 817077

Enc. Submitted documents

c: Requestor
(w/o enclosures)