



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Ms. Jennifer Burnett  
Assistant General Counsel & Public Information Coordinator  
University of Texas System  
210 West Seventh Street  
Austin, Texas 78701-2903

OR2022-06340

Dear Ms. Burnett:

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# 933096 (OGC# 203779).

The University of Texas System (the "system") received a request for information pertaining to RFP720-2109 Fully Insured Disability. You state the system 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 third parties. Accordingly, you state, and provide documentation showing, you notified Dearborn Life Insurance c/o Blue Cross and Blue Shield of Texas; Hartford Life and Accident Insurance Company; Metropolitan Life Insurance Company ("Metlife"); The Prudential Insurance Company of America; and Standard Insurance Company of the request for information and of their 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 Metlife. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 any of the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the

remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in it.

We note Metlife asserts exceptions to the required public disclosure of information the system has not submitted for our review. This ruling does not address information beyond what the system has submitted to us for review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the system submitted as responsive to the request for information. *See id.*

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

*Id.* § 552.110(c). Metlife argues some of its information consists of commercial or financial information subject to section 552.110(c).<sup>1</sup> Upon review, we find Metlife has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm, including Metlife's customer information. Accordingly, the system must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by Metlife, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c).<sup>2</sup> However, we find Metlife has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the system may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See Gov't Code* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

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<sup>1</sup> Although Metlife cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

<sup>2</sup> As our ruling on this information is dispositive, we need not address the remaining argument against disclosure of this information.

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Metlife argues some of its remaining information consists of trade secrets subject to section 552.110(b). Upon review, we find Metlife has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the system may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by Metlife, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The system must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)