



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2022

Ms. Mary Dougherty
Public Information Coordinator
Texas Department of Insurance
P.O. Box 12030
Austin, Texas 78711

OR2022-11956

Dear Ms. Dougherty:

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# 942636 (Ref. No. R014481).

The Texas Department of Insurance (the "department") received a request for specified reports filed by three named entities during a specified time period.¹ The department states it has released some information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of Aetna Life Insurance Company; Texas Health + Aetna Health Insurance Company; and Texas Health + Aetna Health Plan, Inc. (collectively, "Aetna"). Accordingly, the department states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office as to why the

¹ You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (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). We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the department received the required deposit on February 4, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

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 Aetna. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2021-28691 (2021). In Open Records Letter No. 2021-28691, we determined, in part, the department must release Aetna's information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007. We note Aetna now seeks to withhold information that may have been previously ordered released by the prior ruling under section 552.110 the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address Aetna's arguments under this exception for any previously released information.

Section 552.110(c) of the Government Code excepts from disclosure "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[.]" Gov't Code § 552.110(c). Aetna argues its information consists of commercial or financial information subject to section 552.110(c).² However, some of Aetna's information at issue may have been previously ordered released pursuant to Open Records Letter No. 2021-28691. Since the issuance of the previous ruling, Aetna has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find Aetna has not taken any measures to protect its information in order for this office to conclude the information now qualifies as commercial or financial information, the release of which would cause Aetna substantial harm. *See id.* § 552.110. Accordingly, we conclude the department may not withhold any previously released information under section 552.110 of the Government Code. However, to the extent the submitted information was not previously released pursuant to Open Records Letter No. 2021-28691, we find Aetna has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold any submitted information not previously released under section 552.110(c) of the Government Code.

In summary, to the extent the submitted information was previously released pursuant to Open Records Letter No. 2021-28691, the department must release this information in accordance with this previous ruling. To the extent the submitted information was not previously released pursuant to Open Records Letter No. 2021-28691, the department must withhold the submitted information under section 552.110(c) of the Government Code.

² Although Aetna cites to former subsection 552.110(b) of the Government Code in its brief, we understand it to raise current subsection 552.110(c) based on the substance of its arguments.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 942636

c: Requestor

1 Third Party