



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2022

Ms. Mary Dougherty
Open Records Attorney
Texas Department of Insurance
P.O. Box 12030
Austin, Texas 78711

OR2022-30425

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# 975641 (TDI Ref. Nos. R016041, R016043, R0160045, R016047, R016049, R016051, R016052, R016055, R016056, and R016058).

The Texas Department of Insurance (the "department") received ten requests from the same requestor for information pertaining to specified insurance companies during a particular timeframe.¹ 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 Aetna Health, Inc. ("Aetna"); CHRISTUS Health Plan ("CHRISTUS"); Community Health Choice, Inc. ("Community"); Friday Health Insurance Company, Inc. ("Friday"); Moda Health Plan, Inc.; Molina Healthcare of Texas, Inc. ("Molina"); Oscar Insurance Company ("Oscar"); Scott and White Health Plan ("Scott"); Superior HealthPlan ("Superior"); and UnitedHealthcare of Texas, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties 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

¹ You state 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Act in certain circumstances). We have received comments from Aetna, CHRISTUS, Community, Friday, Molina, Scott, and Superior. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). Although we received comments from Aetna, Aetna does not raise any exceptions to disclosure of the information at issue. As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, 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 department may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties, or Aetna, may have in the information.

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.” *Id.* § 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
- (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). Section 552.110(c) of the Government Code states:

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). CHRISTUS, Community, Friday, Molina, Oscar, Scott, and Superior argue some of their information consists of trade secrets and commercial or financial information subject to section 552.110(c). Upon review, we find CHRISTUS, Community, Friday, Molina, Oscar, Scott, and Superior have demonstrated portions of their information constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we have indicated under section 552.110(c) of the Government Code.² However, we find Molina has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or constitutes commercial or financial information, the

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

release of which would result in substantial competitive harm. Therefore, the department may not withhold any of Molina's remaining information under section 552.110(b) or 552.110(c) of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure "information *submitted to a governmental body* by a vendor, contractor, potential vendor, or potential contractor *in response to a request for a bid, proposal, or qualification[.]*" *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find Molina has failed to demonstrate the applicability of section 552.1101(a) to its information. Therefore, the department may not withhold any of Molina's remaining information under section 552.1101(a) of the Government Code.

In summary, the department must withhold the information we have indicated under section 552.110(c) of the Government Code. The department must release the remaining 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/eb

Ref: ID# 975641

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)