



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 16, 2022

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

OR2022-39279

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# 987363.

The Texas Department of Insurance (the "department") received a request for information submitted by insurance companies pertaining to a specified form. You state the department will redact e-mail addresses pursuant to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> Although the department takes 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 third parties. Accordingly, you state, and provide documentation showing, the department notified the 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 Act in certain circumstances). We have received comments from Aetna Life Insurance Company ("Aetna"), Blue Cross Blue Shield of Texas ("BCBSTX"), Celtic Insurance Company ("Celtic"), Christus Health Plan ("CHP"), Cigna Corporation ("Cigna"), Humana Insurance Company ("Humana"), Memorial Hermann Commercial Health Plan, Inc. ("Memorial"), Molina Healthcare of Texas, Inc. ("Molina"), Oscar Insurance Company ("Oscar"), Sendero Health Plans, Inc. ("Sendero"), Transamerica Life Insurance Company ("Transamerica"), UnitedHealth Group

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<sup>1</sup> Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Accordingly, we need not address any argument against disclosure of this information.

("UnitedHealth"), and 4 Ever Life Insurance Company ("4EVER").<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

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 remaining third parties at issue explaining why their information should not be released. Therefore, we have no basis to conclude any 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 of the information at issue on the basis of any proprietary interest any remaining third party may have in it.

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 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:

- (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). Aetna, Celtic, CHP, Cigna, Humana, Memorial, Molina, Oscar, Sendero, Transamerica, UnitedHealth, and 4EVER argue their information consists of trade secrets and commercial or financial information subject to section 552.110(c). Upon review, we find Aetna, Celtic, Cigna, Humana, Memorial, Molina, Oscar, Sendero, Transamerica, UnitedHealth, and 4EVER 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. However, we find Celtic and Transamerica have failed to provide specific factual evidence demonstrating the remaining

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<sup>2</sup> Although Aetna raises section 552.101 in conjunction with sections 552.104 and 552.110, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Although Celtic raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume Celtic has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the department may not withhold any of Transamerica or Celtic's remaining information under section 552.110(b) or 552.110(c) of the Government Code.

Celtic argues some of their information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of certain individuals. *See id.* § 552.117. Upon review, we find Celtis has failed to demonstrate the applicability of section 552.117 of the Government Code to the remaining information at issue. Therefore, the department may not withhold any of Celtic's information under section 552.117 of the Government Code.

In summary, the department must withhold the information we indicated under section 552.110 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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/eb

Ref: ID# 987363

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third parties  
(w/o enclosures)