



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2007

Ms. Cynthia Villarreal-Reyna  
Section Chief of the Agency Counsel Section  
Legal and Compliance Division, MC 110-1A  
Texas Department of Insurance  
P. O. Box 149104  
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OR2007-14405

Dear Ms. Villarreal-Reyna:

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# 293585.

The Texas Department of Insurance (the "department") received a request for the rate filings and underwriting guidelines for specified small employer carriers/HMOs. You state that you will release some of the requested rate filings. You claim that parts of the submitted information are excepted from disclosure under section 552.137 of the Government Code. You also state that the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the department notified Aetna Health, Inc. ("Aetna"), United Healthcare of Texas ("United"), Cigna Healthcare of Texas ("Cigna"), Blue Cross and Blue Shield of Texas ("Blue Cross"), and Humana Health Plan of Texas, Inc. ("Humana") of the request for information and of the right of each to submit arguments to this office as to why the requested 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 considered the exceptions claimed and reviewed the submitted information.

Initially, we note that 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 United or Cigna explaining why their requested information should not be released. We have received correspondence from Blue Cross stating that it will not submit reasons to this office as to why any of its information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes these parties' proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Humana argues that some of its information is protected under sections 552.110(a) and 552.110(b). Aetna argues that some of its information is protected under section 552.110(b). Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)–(b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.); Open Records Decision Nos. 552 at 2 (1990), 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its competitors];
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982), 306 (1982), 255 (1980), 232 (1979). This office must accept a claim that information subject to the Act is exempted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial 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(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 661 (1999).

Humana asserts that its rate filing information, including actuarial and underwriting standards, guidelines and practices, are trade secrets under section 552.110(a). Based on

Humana's representations and our review, we determine that Humana has made a *prima facie* case that the some of its information constitutes a trade secret under section 552.110(a). Further, we have received no arguments to rebut this claim as a matter of law. The department must withhold the information Humana has marked pursuant to section 552.110(a).<sup>1</sup>

Aetna asserts that specified information contained in its rate filings, including factor information and base rate tables, constitute protected commercial or financial information under section 552.110(b). Upon review, we determine that Aetna has established, based on a specific or factual evidentiary showing, that release of some of its information would cause it substantial competitive harm. Accordingly, the department must withhold the information we have marked pursuant to section 552.110(b). However, with respect to Aetna's remaining information at issue, we determine that it has failed to demonstrate, based on a specific factual or evidentiary showing, that release of its remaining information at issue would cause it substantial competitive harm. Accordingly, no part of Aetna's remaining information at issue may be withheld on this basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c), such as an e-mail address provided to a governmental body on a letterhead. *See* Gov't Code § 552.137(a)-(c). You inform us that none of the individuals at issue have affirmatively consented to release of their e-mail addresses. The department must withhold the e-mail addresses that we have marked pursuant to section 552.137.

In summary, the department must withhold the information marked by Humana under section 552.110(a) of the Government Code. The department must withhold the information we have marked pursuant to section 552.110(b). The department must withhold the e-mail addresses we have marked pursuant to section 552.137. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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<sup>1</sup>As our ruling for this information is dispositive, we do not address Humana's remaining arguments against disclosure.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

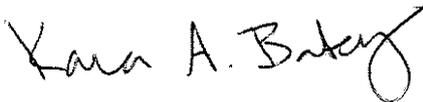
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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Open Records Division

KAB/jh

Ref: ID# 293585

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