



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2008

Ms. Cynthia Villarreal-Reyna
Section Chief
Agency Counsel
Legal Services Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2008-15615

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# 327801.

The Texas Department of Insurance (the "department") received a request for premium rate adjustment filings for all small group health contracts for the year 2008. Although the department takes no position on whether the submitted filings are excepted from disclosure, you state that release may implicate the proprietary rights of certain third parties. Accordingly, you inform us, and provide documentation showing, that you notified Connecticut General Life Insurance Company ("Connecticut"), First Health Life & Health Insurance Company ("First Health"), John Alden Life Insurance Company ("John Alden"), Pacificare Life Assurance Company ("Pacificare"), Time Insurance Company ("Time"), Union Security Insurance Company ("Union"), and United Healthcare Insurance Company ("United") of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.301(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received and considered comments from Connecticut, Time, John Alden, and Union. 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any

arguments from First Health, United, or Pacificare. We thus have no basis for concluding that any portion of the First Health, United, or Pacificare filings constitute proprietary information, and the department may not withhold any portion of this information on that basis. *See* 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). Consequently, the First Health, United, and Pacificare filings must be released.

Next, John Alden, Time, and Union direct our attention to detailed supplemental materials, including a letter submitted to the department on or about July 7, 2008, which they argue should be withheld. However, the department did not submit these materials as responsive to the instant request. John Alden, Time, and Union do not make any arguments against the release of the submitted filings. Therefore, the department must release the John Alden, Time, and Union filings.

We will now address Connecticut's claims. Section 552.110(b) of the Government Code 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); *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Connecticut claims that release of its filing would substantially harm its commercial or financial interests because competitors may be able to calculate the company's proprietary information from it. However, beyond making this general assertion, Connecticut has not submitted specific factual evidence that substantial competitive injury would result from release of its filings. Therefore, the department may not withhold any of Connecticut's information under section 552.110(b). The submitted information must be released to the requestor.

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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 327801

Enc. Submitted documents

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