



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-07414

Dear Mr. Cheatham:

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# 419034 (GC# 18381).

The City of Houston (the "city") received a request for information pertaining to a specified request for proposals, specifically the executive summary of Blue Cross Blue Shield ("Blue Cross") and CIGNA Healthcare ("CIGNA"), the consultants' report to the benefits division detailing the two finalists, and the cost to the city of both finalists for fiscal and plan years 1, 2, and 3.¹ You state some of the requested information has been released. 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 Blue Cross and CIGNA, as well as MHealth, Inc. ("MHealth"), Aetna Life Insurance Company ("Aetna"), and UnitedHealthcare Insurance Company ("UnitedHealthcare"). Accordingly, you state you notified Blue Cross, CIGNA, MHealth, Aetna, and UnitedHealthcare of the request for information and of their rights 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 correspondence from

¹You state the city 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).

MHealth, UnitedHealthcare, and one additional third party. We have considered the submitted comments and reviewed the submitted information.

Initially, MHealth and UnitedHealthcare argue their information is not responsive to the instant request for information, which seeks information, including a specified report, pertaining to a specified request for proposals and the two finalists, Blue Cross and CIGNA. We note a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the city has submitted a report as responsive to the request that includes MHealth and UnitedHealthcare's information. Further, the city has notified MHealth and UnitedHealthcare of the request for information. Therefore, we find the city has made a good-faith effort to relate the request to information the city maintains. Thus, we find the submitted information to be responsive and we will address MHealth and UnitedHealthcare's remaining arguments against disclosure of the information at issue.

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 arguments from Blue Cross, CIGNA, or Aetna explaining why the submitted information should not be released. Therefore, we have no basis to conclude either Blue Cross, CIGNA, or Aetna has a protected proprietary interest in the submitted information. *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). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Blue Cross, CIGNA, or Aetna may have in the information.

MHealth and UnitedHealthcare both argue their submitted information is excepted from disclosure under section 552.110 of the Government Code. 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.*; *see also* ORD 661 at 5 (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).

MHealth and UnitedHealthcare both argue their submitted information contains commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find MHealth and

UnitedHealthcare have demonstrated release their submitted information would result in substantial harm to their competitive positions. Accordingly, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code.²

In summary, the city must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bs

Ref: ID# 419034

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address UnitedHealthcare's remaining arguments against disclosure of its submitted information.

Ms. Sarah L. Reynolds
CIGNA Healthcare
c/o Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
(w/o enclosures)

Ms. Virginia C. Alverson
Jackson Walker LLP
For MHealth Inc.
901 Main Street, Suite 6000
Dallas, Texas 75202
(w/o enclosures)

Mr. Louie Heerwagen
Aetna
c/o Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
(w/o enclosures)

Mr. Brian Naiser
Blue Cross Blue Shield
c/o Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
(w/o enclosures)

Mr. John K. Edwards
Jackson Walker LLP
For UnitedHealthcare
901 Main Street, Suite 6000
Dallas, Texas 75202
(w/o enclosures)