



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Sara Shiplet-Waitt
Senior Associate Commissioner
Legal & Regulatory Affairs MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-14751

Dear Ms. Shiplet-Waitt

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# 432666 (TDI# 117737).

The Texas Department of Insurance (the "department") received a request for specified rate filing for several named companies for a specified time period.¹ You state you have released some of the requested information. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the interests of third parties. Accordingly, you state, and submit documentation showing, you notified Aetna Health and Life Insurance Company and Aetna Health, Inc. (collectively, "Aetna"), Blue Cross Blue Shield of Texas ("Blue Cross"), and Unicare Life and Health Insurance, Inc. ("Unicare") of the request for information and of their right to submit arguments to this office as to why their submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested

¹We note the department received clarification regarding this request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Aetna and Blue Cross. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

Next, 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) of the Government Code 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 Unicare. Thus, we have no basis to conclude that any portion of the submitted information constitutes the proprietary information of Unicare. *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. Accordingly, the department may not withhold any of the submitted information based on any proprietary interests Unicare may have in it.

Aetna and Blue Cross raise section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find Aetna and Blue Cross have each established portions of their respective information, which we have marked, constitute commercial or financial information, the release of which would cause them substantial competitive injury.

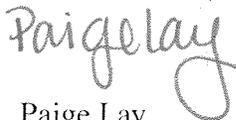
Therefore, the department must withhold the information we have marked under section 552.110(b) of the Government Code.²

In summary, the department must withhold the information we have marked under section 552.110(b) 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 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 432666

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address Blue Cross's remaining argument against disclosure of this information.

Bruce McCandless
Unicare
c/o Sara Shiplet-Waitt
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104
(w/o enclosures)

Mark Chulick
Aetna
Law & Regulatory Affairs, F730
2777 Stemmons Freeway
Dallas, Texas 75207
(w/o enclosures)

Andrew MacRae
Counsel to BlueCross BlueShield of Texas
Levatino Pace L.L.P.
1101 South Capital of Texas Highway, Suite 200
Austin, Texas 78746
(w/o enclosures)