



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2012

Ms. Cynthia Villarreal-Reyna
Director, Office of Agency Counsel
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-02458

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# 446218 (TDI # 122635).

The Texas Department of Insurance (the "department") received a request for a specified small group major medical form filing.¹ Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of United Healthcare Insurance Company ("United"). Accordingly, you state, and submit documentation showing, you notified United of the request for information and of its right to submit arguments to this office as to why its 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 third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

¹We note the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a 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).

Initially, 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) 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, this office has not received comments from United explaining why any of the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the responsive information would implicate United's proprietary interests. *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, we conclude that the department may not withhold any of the submitted information on the basis of any interest United may have in it.

Section 552.137 of the Government Code 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).² Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold this e-mail address under section 552.137 of the Government Code unless the owner of the e-mail address has affirmatively consented to its release.³ As no further exceptions to disclosure are raised, the department must release the remaining information to the requestor.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 446218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ryan Tredway
United Healthcare
5901 Lincoln Drive
Edina, Minnesota 55436
(w/o enclosures)