



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

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

OR2012-10345

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# 458218 (TDI# 126679).

The Texas Department of Insurance (the "department") received a request for specified rate increase percentages of eight named companies over a specified period of time. You state the department does not have records responsive to part of the request.¹ You also state you will release some information to the requestor. Although you take no position on the public availability of the responsive information, you state some of the information at issue may implicate the proprietary interests of Humana Insurance Co. ("Humana"). Accordingly, you notified Humana of the request for information and of its right to submit arguments to this office as to why the information at issue 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

¹The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially we note, and you acknowledge, some of the information you have submitted is not responsive to the request. The department has submitted a spreadsheet related to certain benefit plans. The requestor, however, seeks only specified rate increase percentages. Thus, only that information is responsive to the request. This ruling does not address the public availability of the remaining non-responsive information, and the department need not release information that is not responsive to the request.

Next, you state some of the requested information was the subject of a previous request for information regarding the specified rate increase histories of thirty-one companies for a specified period of time, in response to which this office issued Open Records Letter Ruling No. 2012-00711 (2012). In that ruling, we determined the department must withhold Humana's rate increase data under section 552.110 of the Government Code. Further, there is no indication there has been a change in the law, facts, or circumstances on which the previous ruling was based. Thus, the department must continue to rely on Open Records Letter No. 2012-00711 as a previous determination and withhold or release the responsive information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, the remaining responsive information, which you have marked, was not at issue in the previous ruling. Accordingly, we must address the public availability of this information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Humana. Thus, Humana has failed to demonstrate that it has a protected proprietary interest in the remaining responsive information. *See id.* § 552.110(a)-(b); 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 the remaining responsive information on the basis of any proprietary interests Humana may have. As no other exceptions to disclosure have been raised, this 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 458218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Rachel K. Padgett
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(w/o enclosures)