



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2012

Ms. Cynthia Villarreal-Reyna
Director
Legal Section, General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-14055

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# 463922 (TDI No. 128807).

The Texas Department of Insurance (the "department") received a request for the rate increase history for specified Medigap insurance plans from four specified companies. You state the department will release some information to the requestor. Although you take no position on whether the requested information is excepted from disclosure, you state release of portions of this information may implicate the proprietary interests of United Healthcare Insurance ("United"), Blue Cross Blue Shield of Texas ("Blue Cross"), and Aetna Life Insurance ("Aetna"). Accordingly, you have notified the third parties of the request and of their right to submit arguments to this office as to why the requested 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 the circumstances). We have reviewed the submitted information and the comments submitted by an attorney for Blue Cross.

Initially, we note you have not submitted information responsive to the portion of the request for the rate increase history for United of Omaha. To the extent information responsive to

this portion of the request existed when the department received the request for information, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 ruling, we have not received comments from United or Aetna. Further, although we received comments from an attorney for Blue Cross, Blue Cross notified this office it did not oppose release of the requested information. Thus, we have no basis to conclude United, Aetna, or Blue Cross has a protected proprietary interest in any of the submitted 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 the 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 information at issue on the basis of any proprietary interest United, Aetna, or Blue Cross may have in the submitted information. As no exceptions to disclosure have been raised, the department must release the submitted 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 463922

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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