



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2012

Mr. Stanton Strickland  
Associate Commissioner  
Legal Section  
Texas Department of Insurance  
P.O. Box 149104, Mail Code 110-1A  
Austin, Texas 78714-9104

OR2012-15019

Dear Mr. Strickland:

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# 466190 (TDI # 129430).

The Texas Department of Insurance (the "department") received a request for information pertaining to the medicare supplemental rate increase percentages for three specified companies from a specified time period. You indicate the department has released some information pertaining to one of the specified companies. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of the submitted information may implicate the proprietary interests of Physician's Mutual Insurance Company ("PMIC") and Mutual of Omaha Insurance Company ("MOIC"). Accordingly, you submit documentation showing the department notified these third parties 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 MOIC. We have reviewed the submitted information.

In the submitted correspondence, MOIC indicates it has no objection to the release of its submitted information. As MOIC does not argue to withhold any of the information submitted by the department, the department may not withhold any portion of the submitted information on the basis of any proprietary interest MOIC may have in the information.

We note that 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 decision, we have not received any correspondence from PMIC. Thus, we find PMIC has not demonstrated that it 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 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 submitted information on the basis of any proprietary interest PMIC may have in the information. As no arguments against disclosure of the submitted information are raised, the department must release the submitted 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 466190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Pamela Bishop  
Manager, Market Conduct  
Corporate Compliance and Ethics Division  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175  
(w/o enclosures)

CT Corporation System  
Physicians Mutual Insurance Company  
350 North Street Paul Street  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Robert Reed  
President  
Physicians Mutual Insurance Company  
P.O. Box 3313  
Omaha, Nebraska 68103-0313  
(w/o enclosures)