



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2013

Mr. Nick Lealos
Staff Attorney
Office of Agency Counsel
Legal Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-17242

Dear Mr. Lealos:

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# 501167 (TDI# 140379).

The Texas Department of Insurance (the "department") received a request for the actuarial memoranda, unified rate review templates, rate tables, and plan benefit schedules from the 2014 Individual Health Plan filings for seven named companies. You state you do not have some of the requested information.¹ Further, you state you have released some of the requested information. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified Aetna Health, Inc ("Aetna"), BlueCross BlueShield of Texas ("BlueCross), Humana, and Scott & White of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

circumstances). We have received comments from representatives of Aetna, BlueCross, and Humana. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 Scott and White. Thus, Scott and White has failed to demonstrate 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 the submitted information on the basis of any proprietary interest Scott and White may have in the information.

We note Humana seeks to withhold certain information the department did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Aetna, BlueCross, and Humana contend portions of their information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

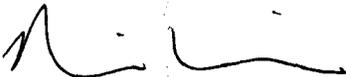
Aetna, BlueCross, and Humana explain release of the information at issue would cause them substantial competitive harm. Each company explains the information at issue reveals the key assumptions made in setting the insurance prices for the year 2014, and the release of the information would allow competitors to use this information to underprice the companies and create their own business methodologies. It is explained the rates at issue have not been published, but rather are being finalized. Upon review, we find Aetna, BlueCross, and Humana have made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their information at issue would cause substantial competitive harm. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual

evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code.² As no exceptions to disclosure have been raised for the remaining information, it 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/som

Ref: ID# 501167

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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²As ruling is dispositive, we need not address the remaining submitted arguments.

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