



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2016

Mr. Stanton Strickland
Associate Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-03355

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# 597899 (TDI #166730).

The Texas Department of Insurance (the "department") received a request for specified types of records filed by three named third parties during a specified time period. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Aetna Life Insurance Company ("Aetna"), Blue Cross Blue Shield of Texas ("BCBS"), and Cigna Health and Life Insurance Company ("Cigna"). Accordingly, you state, and provide documentation showing, you 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 comments from Aetna, BCBS, and Cigna. We have reviewed the submitted information and the submitted arguments.

Initially, we note Cigna argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the department has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information.

Next, Aetna argues some of its information is not responsive to the request for information. We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the department has done so. Upon review, therefore, we find the information at issue, which the department submitted as responsive, to be responsive to the request. Therefore, the department must release the information at issue unless the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

Next, BCBS argues its information is confidential because it was submitted to the department with an expectation of confidentiality. We note information is not confidential under the Act simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the requested information falls within an exception to disclosure, the department must release it, notwithstanding any expectations or agreement specifying otherwise.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Both Aetna and BCBS state they have competitors. In addition, Aetna and BCBS state release of portions of their information would give advantage to their competitors or other bidders. After review of the information at issue and consideration of the arguments, we find Aetna and BCBS have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code.¹

Cigna raises section 552.110(b) of the Government Code for some of its information. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999). Cigna contends portions of its information consist of commercial or financial information, the release of which would cause substantial competitive harm. Upon review, we find Cigna has failed to demonstrate the release of any of the information at issue would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, none of the remaining information may be withheld under section 552.110(b) of the Government Code.

Aetna argues portions of the remaining information are subject to section 552.137 of the Government Code. Section 552.137 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). Gov’t Code § 552.137(a)-(c). The e-mail addresses within the submitted information are not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail addresses within the remaining information under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

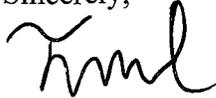
Aetna argues portions of the remaining information are subject to section 552.147 of the Government Code. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the department may withhold the social security number of any living individuals within the remaining information under section 552.147 of the Government Code.

In summary, the department: (1) may withhold the information we have marked under section 552.104(a) of the Government Code; (2) must withhold the e-mail addresses within the remaining information under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release; (3) may withhold the social security number of any living individuals within the remaining information under section 552.147 of the Government Code; and (4) must release the remaining 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 597899

Enc. Submitted documents

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