



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2016

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

OR2016-05638

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# 604610 (TDI #169076).

The Texas Department of Insurance (the "department") received a request for information pertaining to Benchmark Insurance Company ("Benchmark") and Cypress Texas Lloyds. You state the department has released some of the requested information. 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 Benchmark. Accordingly, you state, and provide documentation showing, you notified Benchmark of the request for information and of its right 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 Benchmark. We have reviewed the submitted information and the submitted arguments.

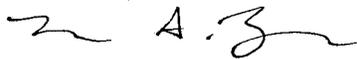
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 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. Benchmark states it has competitors. In addition, Benchmark states release of the information it has indicated "would allow competitors to obtain and review Benchmark's requirements and process for rating such business." Thus, Benchmark states release of the information at issue could significantly harm Benchmark's ability to compete in this market. After review of the information at issue and consideration of the arguments, we find Benchmark has 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 at issue, which we have marked, under section 552.104(a) of the Government Code.¹ As no further exceptions to disclosure have been raised, the department 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 604610

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

Mr. Bruce McCandless III
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(w/o enclosures)