



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2016

Mr. David Wheelus  
Open Records Attorney  
Office of Agency Counsel  
Legal Section, General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2016-19237

Dear Mr. Wheelus:

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# 624197 (TDI# 173001).

The Texas Department of Insurance (the "department") received a request for thirty specified filings.<sup>1</sup> You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Liberty Mutual Insurance Company ("Liberty Mutual"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its right to submit arguments to this office as to why the information at issue 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

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<sup>1</sup>You state the department sent this requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See Gov't Code* § 552.2615.

explain applicability of exception in the Act in certain circumstances). We have received comments from counsel for Liberty Mutual. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839 (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. Liberty Mutual states it has competitors. In addition, Liberty Mutual states its information “includes details about the business judgment and risk assessment that form the basis for Liberty Mutual’s entire market strategy for [automobile insurance] in Texas.” Liberty Mutual states the release of its information would “provide [its] competitors a windfall in terms of development cycles and costs” and its competitors would “be able to replicate [Liberty Mutual’s] . . . proprietary underwriting data and analysis.” Upon review of the information at issue and consideration of the arguments, we find Liberty Mutual 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 we have indicated under section 552.104(a) of the Government Code.

We note, and you acknowledge, some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department may withhold the information we have indicated under section 552.104(a) of the Government Code. The department must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read "Joseph Behnke". The signature is stylized with a large initial "J" and a long horizontal stroke.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 624197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)