



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2012

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-00822

Dear Mr. Smith:

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# 442439.

The Health and Human Services Commission (the “commission”) received eight requests for information related to the bidding for RFP No. 529-12-0002.¹ You state the commission has released some of the requested information. We understand the commission does not possess any report or presentation prepared by a benefits consultant or committee.² You claim a portion of the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. In addition, you state release of a portion of the submitted information may implicate the proprietary interests of certain third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of the companies’ right to submit arguments

¹We note the commission sought and received clarification from two of the requestors regarding the request. See Gov’t Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986).

to this office as to why their information should not be released.³ Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Aetna Health, Inc. ("Aetna"); Christus Health Plan ("Christus"); FirstCare HealthPlans ("FirstCare"); Molina Healthcare ("Molina"); Sendero Health Plans ("Sendero"); Seton Health Plan, Inc. ("Seton"); Superior Healthplan ("Superior"); and representatives of Blue Cross and Blue Shield of Texas ("BCBS"); and Valley Baptist Insurance Company ("VBIC"). We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.⁴

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state the commission received the first request for information on October 25, 2011. You inform our office the commission was closed on November 11, 2011 in observance of the Veteran's Day holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the commission was required to submit the information required by section 552.301(e) by November 16, 2011. Although you submitted some of the responsive records by the fifteen-business-day deadline, a portion of the responsive information was not submitted until November 23, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, with respect to the additional information submitted in your November 23, 2011 correspondence, we find the commission failed to comply with the procedural requirements of section 552.301.

³The third parties notified pursuant to section 552.305 are: Today's Options; Valley Baptist Insurance Company; Superior Healthplan; Seton Health Plan, Inc.; Sendero Health Plans; Parkland Community Health Plan, Inc.; Molina Healthcare; FirstCare HealthPlans; UnitedHealthcare d/b/a Evercare of Texas; Christus Health Plan; Blue Cross Blue Shield of Texas; Amerigroup Insurance Company; and Aetna Health, Inc.

⁴We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You assert third party interests are at stake regarding the information submitted in your November 23, 2011, correspondence. Because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information submitted on November 23, 2011 is excepted from disclosure under the Act. We will also address your arguments for the timely submitted information.

FirstCare, Seton, and VBIC seek to withhold information the commission has not submitted 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 commission. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Furthermore, Seton additionally asserts some of the information submitted by the commission is not responsive to the instant requests. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the commission has reviewed its records and determined that the documents it has submitted for Seton are responsive to the requests. Thus, we find the commission has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we will determine whether the commission must release the submitted information regarding Seton to the requestors under the Act.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Amerigroup Insurance Company ("Amerigroup"); Evercare of Texas ("Evercare"); Parkland Community Health Plan, Inc. ("Parkland"); or Today's Options explaining why their submitted information should not be released. Therefore, we have no basis to conclude Amerigroup, Evercare, Parkland, or Today's Options have protected proprietary interests in their information. *See id.* § 552.110; 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.

Consequently, the commission may not withhold any of the submitted information on the basis of proprietary interests Amerigroup, Evercare, Parkland, or Today's Options may have in the information.

We next note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Although you assert the information subject to section 552.022 is excepted from disclosure under section 552.103, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); ORD 542 at 4 (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the commission may not withhold the information subject to section 552.022, which we have marked, under section 552.103. As you raise no further exceptions for this information, it must be released. We next address your arguments for the information not subject to section 552.022.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

To establish that litigation is reasonably anticipated for the purposes of section 552.103, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *See Open Records Decision No. 452 at 4 (1986).* In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is “realistically contemplated.” *See Open Records Decision No. 518 at 5 (1989); see also Attorney General Opinion MW-575 (1982)* (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to Gov't Code § 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See ORD 452 at 4.*

You state that a lawsuit styled *Southwest Pharmacy Solutions, Inc. d/b/a American Pharmacies v. Texas Health and Human Services Commission and Thomas Suehs*, Cause No. D-1-GN-11-002612 was filed in the 126th District Court of Travis County, prior to the commission's receipt of this request for the information at issue. However, the submitted information reflects the Travis County District Court granted the commission's plea to the jurisdiction and dismissed the plaintiff's suit before the request was made for the information. Although you assert that litigation is still pending because the district court maintains plenary jurisdiction and the plaintiff can still appeal the judgment, we determine the chance the plaintiff will appeal is insufficient to demonstrate the litigation is still pending. You explain that the lawsuit concerned alleged violations of the rulemaking requirements of the Texas Administrative Procedures Act and *ultra vires* conduct on the part of the commission. In addition, you state the commission expects further litigation concerning this issue. Based on your representations, our review of the information at issue, and the totality of the circumstances, we find the commission reasonably anticipated litigation when it received the request for the information at issue and find that the information at issue is related to the anticipated litigation. Accordingly, with the exception of the information subject to section 552.022(a)(1), the commission may withhold the information you have marked under section 552.103 of the Government Code.⁵ We next address the arguments of the third parties for the remaining information.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Initially, FirstCare asserts “[the commission] stated that ‘certain non-public financial reports or information submitted. . . in response to RFP Sections 4.2.3.3 and 4.2.3.4’ would be excepted from public disclosure” and that FirstCare submitted the information “with the expectation that its request for confidentiality would be honored.” However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information other statutes make confidential. Section 401.051 of the Insurance Code requires the Texas Department of Insurance (the “department”), or an examiner appointed by the department, to visit each insurance carrier and examine the carrier’s financial condition, ability to meet liabilities, and compliance with the laws affecting the conduct of the carrier’s business. Ins. Code § 401.051(a), (b). In connection with this examination process, section 401.058 states:

(a) A final or preliminary examination report and any information obtained during an examination are confidential and are not subject to disclosure under [the Act].

(b) Subsection (a) applies if the examined carrier is under supervision or conservatorship. Subsection (a) does not apply to an examination conducted in connection with a liquidation or receivership under this code or another insurance law of this state.

Id. § 401.058. FirstCare asserts that portions of its submitted information were created by the department during the course of examinations under chapter 401 of the Insurance Code. However, the present request is for information held by the commission, not the department. FirstCare has not explained how or why section 401.058 would be applicable to information in the commission’s possession. *See* Open Records Decision No. 640 at 4 (1996) (the department must withhold any information obtained from audit “work papers” that are “pertinent to the accountant’s examination of the financial statements of an insurer” under statutory predecessor to section 401.058). Thus, FirstCare has failed to demonstrate any of the information at issue is confidential under section 401.058 of the Insurance Code, and the commission may not withhold it under section 552.101 of the Government Code on that basis.

BCBS, FirstCare, and Superior assert that their financial statements and financial reports are excepted from disclosure under section 823.011 of the Insurance Code in conjunction with section 552.101 of the Government Code. Subchapter B of Chapter 823 of the Insurance Code provides that, “[e]ach insurer authorized to engage in the business of insurance in this state that is a member of an insurance holding company system shall register with the [Commissioner of Insurance (the “commissioner”)]...” and further specifies the types of information to be provided to the department. *See* Ins. Code § 823.051 *et seq.* Additionally, Subchapter H of Chapter 823 of the Insurance Code provides for the examination of insurers that are registered under Subchapter B, and states that the commissioner may order an insurer to produce records, books, or other information papers that are necessary to ascertain the insurer’s financial condition or the legality of the insurer’s conduct. *Id.* § 823.351(a). In connection with this registration and examination process, section 823.011 states:

(a) This section applies only to information, including documents and copies of documents, that is:

(1) reported under Subchapter B; or

(2) disclosed to the commissioner under Section 823.010; or

(3) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

(b) The information shall be confidential and privileged for all purposes. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

Id. § 823.011(a), (b). However, as previously noted, the present request is for information held by the commission, not the department. We note the information at issue was not reported to or obtained by the commission through the registration or examination process described in Subchapters B or H of chapter 823. Instead, BCBS, FirstCare, and Superior submitted the information at issue to the commission in response to its request for proposals. Thus, we find section 823.011 is not applicable to information that BCBS, FirstCare, and Superior submitted to the commission. Accordingly, we conclude that the information at issue is not confidential under section 823.011 of the Insurance Code and may not be withheld on that basis under section 552.101 of the Government Code.

Molina and Seton raise section 552.104 of the Government Code and Seton also raises section 552.116 of the Government Code for portions of their submitted information. Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder. Gov’t Code § 552.104. Section 552.116 excepts from disclosure “an audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating

under Section 22.074 Transportation Code, including any audit relating to the criminal background check of a public school employee[.]” *Id.* § 552.116. However, we note section 552.104 and section 552.116 are discretionary exceptions which protect only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the commission does not seek to withhold any information pursuant to sections 552.104 and 552.116, no portion of the remaining information may be withheld on the basis of these exceptions.

Superior, Seton, Sendero, Molina, FirstCare, Christus, Aetna, VBIC, and BCBS each claim some of their submitted information is excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. Gov’t Code § 552.110(a)-(b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person’s claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors

have been demonstrated to establish a trade secret claim.⁶ Open Records Decision No. 402 (1983).

Section 552.110(b) protects “commercial 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 section 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.*; ORD 661 at 5-6.

Superior, Molina, FirstCare, Christus, Aetna, BCBS and VBIC claim the information they seek to withhold constitutes trade secrets under section 552.110(a). Upon review, we find Christus, Aetna, and Molina have made a *prima facie* case the information we have marked constitutes trade secret information for purposes of section 552.110(a). Accordingly, the commission must withhold the information we have marked in Christus’s, Aetna’s, and Molina’s proposals under section 552.110(a) of the Government Code. However, we find Christus, Aetna, and Molina have not demonstrated how the remaining information they seek to withhold, and VBIC, BCBS, Superior, and FirstCare have not demonstrated how any of their information, meets the definition of a trade secret. We note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982). Consequently, the commission may not withhold any of Christus’s, Aetna’s, or Molina’s remaining information or VBIC’s, BCBS’s, Superior’s, or FirstCare’s information under section 552.110(a) of the Government Code.

Seton, Sendero, Aetna, FirstCare, BCBS, and Christus claim portions of their respective information, and VBIC and Superior claim their information in its entirety, constitutes commercial information that, if released, would cause the companies substantial competitive harm. After reviewing the submitted arguments and the information at issue, we find

⁶The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Sendero has established that release of its information at issue, and Seton, Aetna, BCBS, and Superior have established release of portions of their information at issue, would cause the companies substantial competitive injury. Therefore, the commission must withhold this information, which we have marked, under section 552.110(b) of the Government Code. We find, however, Seton, Aetna, BCBS, and Superior have not demonstrated how release of their remaining information, and VBIC, Christus, and FirstCare have not demonstrated how release of any of their information, would cause them substantial competitive injury, and have provided no specific factual or evidentiary showing to support such assertions. *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 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). Consequently, the commission may not withhold any of Seton's, Aetna's, BCBS's, or Superior's remaining information or any of VBIC's, Christus' or FirstCare's information under section 552.110(b) of the Government Code.

We note section 552.136 of the Government Code is applicable to some of the remaining information. Section 552.136 provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁷ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of section 552.136. The commission must withhold the bank account, bank routing, and insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the remaining 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, with the exception of the information subject to section 552.022(a)(1) of the Government Code, the commission may withhold the information you have marked under section 552.103 of the Government Code. The commission must withhold the information we have marked in Cristus's, Aetna's, Molina's, Seton's, BCBS's, and Superior's proposals

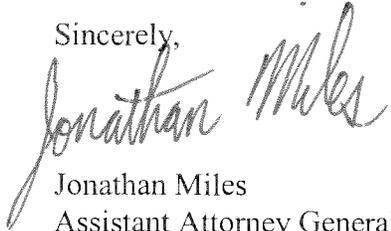
⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.110 of the Government Code. The commission must withhold the bank account, bank routing, and insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.⁸

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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 442439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

⁸We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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APR 4 2015

At 3:47 P.M. NS
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-000222

BLUE CROSS AND BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	25th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL FOR THE STATE OF TEXAS, ¹ <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Blue Cross and Blue Shield of Texas, a division of Health Care Service Corporation (BCBSTX), and Defendant Ken Paxton, Attorney General of Texas (Attorney General), appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This is an action brought by BCBSTX to challenge Attorney General Open Records Letter Ruling OR2012-00822 (the Ruling). The Texas Health and Human Services Commission (HHSC) received a request from Ms. Cathy Chen (the Requestor) pursuant to the Public Information Act (the PIA), Tex. Gov't Code ch. 552, for certain documents related to responses to a specified Request for Proposal issued by HHSC. These documents contain information BCBSTX contends is confidential and proprietary information excepted from disclosure under the PIA. HHSC requested an open records ruling from the Open Records Division of the Office of the Attorney General (ORD). ORD subsequently issued the Ruling, ordering the release of portions of the requested

¹ Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became Texas Attorney General on January 5, 2015, and is now the appropriate defendant in this cause.

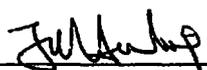
information, including a portion of the information BCBSTX contends is protected from disclosure (the BCBSTX Contested Information). HHSC holds the information that has been ordered to be disclosed.

The parties represented to the Court that: (1) pursuant to Tex. Gov't Code § 552.327(2) the Attorney General has determined and represents to the Court that the Requestor has in writing voluntarily withdrawn the request for information, (2) in light of this withdrawal the lawsuit is now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1) the parties agree to the dismissal of this cause.

IT IS THEREFORE ORDERED that:

1. Because the request was withdrawn, no part of the BCBSTX Contested Information should be released in reliance on Letter Ruling OR2012-00822. Insofar as it pertains to the BCBSTX Contested Information, Letter Ruling OR2012-00822 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
2. Within 30 days of the signing of this Final Judgment, the Office of the Attorney General shall notify HHSC in writing of this Final Judgment and shall attach a copy of this Final Judgment to the written notice. In the notice, the Office of the Attorney General shall instruct HHSC that pursuant to Tex. Gov't Code § 552.301(g), it shall not rely upon Letter Ruling OR2012-00822 as a prior determination under Tex. Gov't Code § 552.301(f), insofar as it pertains to the BCBSTX Contested Information, nor shall it release any of the BCBSTX Contested Information in reliance on said Ruling, and if HHSC receives any future requests for the same BCBSTX Contested Information it must request a new decision from the Office of the Attorney General, which shall review the request without reference to Letter Ruling OR2012-00822.
3. All costs of court are taxed against the parties incurring same.
4. This cause is hereby DISMISSED without prejudice.

Signed this 23RD day of April, 2014



JUDGE PRESIDING
T M SUKAK

AGREED:



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Coventry Health Care, Capital BlueCross, WellCare, Superior HealthPlan, Bank of America—Merrill Lynch Equity Research, Raymond James & Associates, Blue Cross and Blue Shield of Texas, Health Management Associates, Amerigroup Corporation and Taylor Dunham, LLP have voluntarily withdrawn their requests for information in writing. In addition, the Attorney General represents to the Court that the requestors Molina Healthcare, Bruce Bower, Universal Health Care Group, Magellan Health Services, Debra Maquet, and D. McPhaul have abandoned their requests for information. One final request, from DC Tech, was determined by the parties not to implicate information Plaintiff contends is exempt from disclosure.

Further, Letter Rulings OR2015-18804 and OR2012-00822 will not be considered as a previous determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, HHSC may ask for a decision from the Attorney General under Tex. Gov't Code § 552.301(g). Accordingly, HHSC is not required to disclose the requested information subject to release in Letter Rulings OR2015-18804 and OR2012-00822. The parties request that the Court enter this Agreed Order of Dismissal.

The Court is of the opinion that entry of an agreed dismissal order is appropriate.

It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All court costs and attorney fees are taxed to the party incurring same;

All other requested relief not expressly granted herein is denied;

This order disposes of all claims between the parties and is final.

Signed this 31ST day of Jan, 2017.



JUDGE PRESIDING

AGREED:



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