



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

April 16, 2014

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Mail Code - 1070
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.

OR2014-06268

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# 519668.

The Texas Health and Human Services Commission (the "commission") received three requests for information related to request for proposals number 529-13-0042. You state the commission has released most of the requested information. 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 Amerigroup Insurance Company ("Amerigroup"), FirstCare Health Plans ("FirstCare"), Superior Healthplan, Inc. ("Superior"), and United Healthcare ("UHC"). Accordingly, you state, and provide documentation showing, you notified these companies of the request for information and of their 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 reviewed the submitted information.

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 comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest

in the submitted 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. Accordingly, the commission may not withhold any of the information at issue on the basis of any proprietary interest Amerigroup, FirstCare, Superior, or UHC may have in it.

We note the submitted information contains bank account and routing numbers subject to section 552.136 of the Government Code.¹ Section 552.136(b) provides, “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Therefore, the commission must withhold the submitted bank account and routing numbers under section 552.136 of the Government Code.

In addition, some of the submitted information appears to 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 commission must withhold the submitted bank account and routing numbers under section 552.136 of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.²

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/>

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the information to be 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. *See* Gov’t Code § 552.147(b).

[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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 519668

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

Ms. Leah Rummel
United Healthcare
9702 Bissonnet, Suite 2200W
Houston, Texas 77036
(w/o enclosures)

Ms. Stacey Hull
Superior Healthplan, Inc.
2100 South IH-35, Suite 200
Austin, Texas 78704
(w/o enclosures)

Ms. Kim Tippen
FirstCare Health Plans
12940 North Highway 183
Austin, Texas 78750
(w/o enclosures)

Ms. Leann Behrens
Amerigroup Insurance Company
2505 North Highway 360, Suite 300
Grand Prairie, Texas 75050
(w/o enclosures)

JUN 24 2015

Cause No. D-1-GN-14-001291

At 8:36am M. Velve L. Price, District Clerk

UNITEDHEALTHCARE INSURANCE §
COMPANY, INC, D/B/A §
UNITEDHEATHCARE COMMUNITY §
PLAN, §
Plaintiff, §

IN THE DISTRICT COURT OF

v.

53rd JUDICIAL DISTRICT

GREG ABBOTT, ATTORNEY §
GENERAL OF THE STATE OF TEXAS §
and TEXAS HEALTH AND HUMAN §
SERVICES COMMISSION, §

TRAVIS COUNTY, TEXAS

Defendants.

AGREED ORDER OF DISMISSAL

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff UnitedHealthcare Insurance Company, Inc., d/b/a UnitedHealthcare Community Plan (UnitedHealthcare), Defendant Ken Paxton, Attorney General of Texas¹ (Attorney General), and Defendant Texas Health and Human Services Commission (HHSC) agree that this matter should be dismissed pursuant to PIA section 552.327 on the grounds that the requestors have voluntarily withdrawn their requests for information.

A court may dismiss a PIA suit under section 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has

¹ Greg Abbott was sued in his official capacity as the Attorney General of the State of Texas. Ken Paxton is his successor in office and the proper defendant in this lawsuit.

abandoned the request. *See* Tex. Gov't Code § 552.327. The Attorney General represents to the Court that the requestors, Amerigroup Corporation, UnitedHealthcare, Health Management Associates, Superior HealthPlan, and Jeff Henry have voluntarily withdrawn their requests for information in writing. Further, Letter Rulings OR2014-06268 and OR2014-06268A will not be considered as previous determinations 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 Ruling OR2014-06268 and OR2014-06268A. 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;

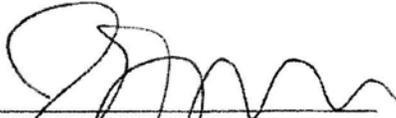
All other requested relief not expressly granted herein is denied;

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

Signed this 24th day of June, 2015.


JUDGE PRESIDING

AGREED:



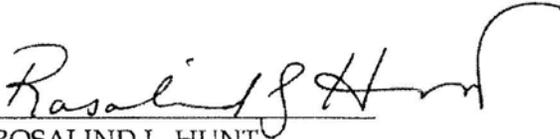
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 UNITEDHEALTHCARE COMMUNITY PLAN



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ATTORNEY FOR DEFENDANT
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 COMMISSION



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