



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2015

Mr. Bob Davis
Office of Agency Counsel
Legal Section, Mail Code 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-09825

Dear Mr. Davis:

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# 564537 (TDI #159510).

The Texas Department of Insurance (the "department") received a request for a specified form filed by Accordia Life and Annuity Company ("Accordia"). Although you take no position as to whether the submitted information is excepted from public disclosure under the Act, you state the release of the submitted information may implicate the proprietary interests of Accordia.¹ Accordingly, you state, and provide documentation showing, you notified Accordia 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under the Act in certain circumstances). We have received comments from Accordia. We have reviewed the submitted information and the submitted arguments.

Accordia claims portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or

¹You acknowledge, and we agree, the department did not comply with the procedural requirements of section 552.301 of the Government Code. *See Gov't Code* § 552.301(b). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information may be withheld on that basis.

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 result from release of the information at issue. *Id.*; see also Open Records Decision No. 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).

Upon review, we find Accordia has demonstrated portions of its information, which we have marked, constitute commercial or financial information, the release of which would cause the company substantial competitive injury. Thus, the department must withhold the portions of Accordia’s information we have marked under section 552.110(b) of the Government Code. However, we find Accordia has not demonstrated substantial competitive injury would result from the release of any of its remaining information. See Open Records Decisions Nos. 661, 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). Therefore, the department may not withhold any of Accordia’s remaining information under section 552.110(b) of the Government Code. As no other 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,

A handwritten signature in cursive script, appearing to read "Paige Thompson".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 564537

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Accordia Life and Annuity Company
c/o Mr. John T. Clendenin
Nyemaster Goode, P.C.
700 Walnut, Suite 1600
Des Moines, Iowa 50309-3899
(w/o enclosures)