



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Mr. Dan Junell  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR2015-14440

Dear Mr. Junell:

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# 571835 (TRS ID# Beatty Bangle Strama 15-1).

The Teacher Retirement System of Texas (the "system") received a request for the following information from a specified time period: (1) all communications between the system and AetnaHealth, Inc., or its affiliates, regarding physician providers in a specified metropolitan area; (2) all communications between the system and AetnaHealth, Inc., or its affiliates, regarding two specified healthcare providers; (3) all policies with respect to network adequacy for a named health benefits program; (4) the contracts between the system and AetnaHealth, Inc., or its affiliates; and (5) the coverage terms for out-of-network providers for a named health benefits program. You state the system has released some information. You state the system does not have information responsive to part 3 of the request.<sup>1</sup> You further state the system will redact information under section 552.136(c) of the Government Code, as well as personal e-mail addresses pursuant to Open Records Decision No. 684

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(2009).<sup>2</sup> Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of Aetna Life Insurance Company (“Aetna”). You state, and provide documentation showing, you notified Aetna of the request and of its right to submit arguments to this office as to why the information should not be released. *See* 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 in certain circumstances). We have received comments from Aetna. We have also received comments from the requestor. *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

You state the information responsive to parts 4 and 5 of the request is subject to previous requests for information, as a result of which this office issued Open Records Letter No. 2015-03649 (2015) and Open Records Letter No. 2015-07293 (2015). In response to those rulings, Aetna filed lawsuits against this office styled *Aetna Life Ins. Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-000876 (353rd Dist. Ct., Travis County, Tex.) and *Aetna Life Ins. Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001648 (53rd Dist. Ct., Travis County, Tex.). Accordingly, we will allow the trial courts to resolve whether the information at issue in the pending lawsuits must be released to the public. However, we will consider Aetna’s submitted arguments with respect to disclosure of the remaining information that was not at issue in the prior rulings.

Section 552.110(b) of the Government Code protects commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* 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 (1999). Aetna asserts the submitted information is commercial or financial information the release of which would cause substantial competitive harm. Upon review of the submitted arguments, we conclude Aetna has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the information at issue would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982). We therefore conclude the system may not withhold the submitted information under section 552.110(b).

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<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

We note 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, we will allow the trial courts to resolve whether the information at issue in *Aetna Life Ins. Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-000876, and *Aetna Life Ins. Co. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001648, must be released to the public. The submitted information must be released; 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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 571835

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Federico Preuss  
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