



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2015

Mr. Bob Davis
Staff Attorney
Office of Agency Counsel - Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2015-20511

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# 581319.

The Texas Department of Insurance (the "department") received a request for information pertaining to the number of claims filed against named companies during a specified time period, including information related to the number of clean claims from noninstitutional preferred providers paid during three separate payment periods.¹ Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Blue Cross and Blue Shield of Texas ("BCBS"), Aetna Health, Inc. ("Aetna Health"), Aetna Dental, Inc. ("Aetna Dental"), CIGNA Healthcare of Texas, Inc. ("CIGNA Healthcare"), CIGNA Dental Health of Texas, Inc. ("CIGNA Dental"), CIGNA Health and Life Insurance Company ("CIGNA Life Insurance"), UnitedHealthcare of Texas, Inc. ("UH"), UnitedHealthcare Benefits of Texas, Inc. ("UHB"), and UnitedHealthcare Insurance Company ("UHIC"). Accordingly, you state you notified each party of the request for information and of its right to submit arguments to this office as to why the information

¹The department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for 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 explain applicability of exception in the Act in certain circumstances). We have received comments from BCBS. We have reviewed the submitted information and considered the submitted argument.

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) of the Government Code 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 Aetna Health, Aetna Dental, CIGNA Healthcare, CIGNA Dental, CIGNA Life Insurance, UH, UHB, or UHIC explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these parties have protected proprietary interests 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 department may not withhold the submitted information on the basis of any proprietary interest Aetna Health, Aetna Dental, CIGNA Healthcare, CIGNA Dental, CIGNA Life Insurance, UH, UHB, or UHIC may have in the information.

BCBS asserts portions of the submitted information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5 (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).

BCBS asserts portions of the submitted information constitute commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find BCBS has demonstrated the information at issue consists of commercial or financial information, the release of which would cause substantial competitive harm to BCBS. Therefore, the department must withhold the information we have marked under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been raised for the remaining information, it must be released.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 581319

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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