



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 2, 2015

Mr. Dirk Johnson  
General Counsel  
Texas Department of Insurance  
7551 Metro Center Drive, Suite 100, Mail Code MS-4D  
Austin, Texas 78744

OR2015-20733

Dear Mr. Johnson:

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# 585058 (TDI# 164289).

The Texas Department of Insurance, Division of Workers' Compensation (the "department") received a request for a specified compliance plan.<sup>1</sup> 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 ACE American Insurance Company ("ACE"). Accordingly, you state, and provide documentation showing, you notified ACE 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); *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 ACE. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at \*9. ACE states it has competitors. In addition, ACE states "[p]ublic release of [the information we have marked], especially in light of the highly-competitive nature of the workers' compensation insurance market, 'would give

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<sup>1</sup>You state the department sought clarification of the request and, in response, the requestor withdrew a portion of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

advantage to a competitor or bidder.”” After review of the information at issue and consideration of the arguments, we find ACE has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>2</sup> As no further exceptions to disclosure are raised, the remaining information 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](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,



Brian E. Berget  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 585058

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Robert F. Johnson III  
For ACE American Insurance Company  
Gardere  
600 Congress Avenue  
Austin, Texas 78701  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.