



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Bob Davis  
Staff Attorney  
Office of Agency Counsel  
Legal Section  
General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
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OR2015-26062

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# 590311 (Ref. No. 165647).

The Texas Department of Insurance (the "department") received a request for all rates, rules, and guidelines for private passenger auto filings filed since a specified date, for Home State County Mutual Insurance Company ("Home State") and Old American County Mutual Fire Insurance Company ("Old American").<sup>1</sup> The department states it will release some information upon the requestor's response to a cost-estimate letter. Although the department takes no position as to whether the submitted information is excepted under the Act, the department informs us release of this information may implicate the proprietary interests of Home State and Old American. Accordingly, the department states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not

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<sup>1</sup>We note the department sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 Empower Managing General Agency, Inc. on behalf of Old American.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

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 Home State explaining why the submitted information should not be released. Therefore, we have no basis to conclude Home State 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest Home State may have in the 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*, 466 S.W.3d 831 (Tex. 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 841. Old American states it has competitors. In addition, Old American states the information at issue includes detailed information about Old American's rating rules and operation practices and release of the information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Old American has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold Old American's information under section 552.104(a) of the Government Code. As no further exceptions against 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.

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<sup>2</sup>Old American informs us Empower Managing General Agency, Inc., serves as its managing general agent.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 590311

Enc. Submitted documents

c: Requestor  
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