



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2016-01042

Dear Ms. Chaphekar:

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# 594220.

The Employees Retirement System of Texas (the "system") received a request for specified underwriting guidelines for short and long term disability insurance. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of Minnesota Life Insurance Company ("MLIC") and Munich American Reassurance Company ("MARC"). Accordingly, you state, and provide documentation showing, you notified MLIC and MARC of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.

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<sup>1</sup>You also argue section 552.110 of the Government Code applies to the requested information. Section 552.110 protects (1) trade secrets obtained from a person and (2) 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(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the system's arguments under this exception.

*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 MLIC and MARC. We have reviewed the submitted representative sample of information and the submitted arguments.<sup>2</sup>

Initially, we note the requestor seeks only the specified underwriting guidelines. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request.

Section 552.104(a) of the Government Code exempts 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. MLIC and MARC state they have competitors. In addition, MLIC states disclosure of the requested information would allow its competitors to tailor their own responses to future requests for proposals to better compete and underbid the company on future government contracts. Further, MARC argues release of the requested information would give its competitors an unfair advantage in the marketplace, frustrating MARC’s efforts to “innovate and ‘out-think’ its rivals in the marketplace.” Thus, MLIC and MARC argue release of the requested information would result in substantial competitive harm to each company. After review of the information at issue and consideration of the arguments, we find MLIC and MARC have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the responsive information under section 552.104(a) of the Government Code.<sup>3</sup>

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>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 594220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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