



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2016

Mr. Bob Davis  
Office of Agency Counsel  
Legal Section MC 110-1C  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2016-05873

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# 599778 (TDI #168087).

The Texas Department of Insurance (the "department") received a request for all approved small group rate filings for all carriers' major medical plans during a specified period of time. You state you will release some information upon approval of a cost estimate. Although the department takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Aetna Health, Inc. and Aetna Life Insurance Co. (collectively "Aetna"); Allegian Insurance Co.; Blue Cross Blue Shield of Texas ("Blue Cross"); Federated Mutual Insurance Co.; Humana Health Plan of Texas and Humana Insurance Co. (collectively "Humana"); National Health Insurance Co.; Nippon Life Insurance Co. of America; Prominence Healthfirst of Texas; SafeGuard Health Plans, Inc.; Scott & White Health Plan, Inc.; SHA, L.L.C.; Southwest Life & Health Insurance Co.; United Healthcare of Texas ("United"); and Vista Health Plan, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties 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. *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 Aetna, Humana, Blue Cross, and United. We have considered the submitted arguments and reviewed the submitted information.

United argues its information is subject to a previous request for information, as a result of which this office issued Open Records Letter No. 2014-19324 (2014). However, none of the submitted information was at issue in that ruling. Accordingly, the department may not withhold any of United's information in accordance with Open Records Letter No. 2014-19324. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

United also argues its information is subject to two other previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-16920 (2015) and 2015-21777 (2015). In those rulings, we determined, in relevant part, the department must withhold some of United's information under sections 552.110 and 552.137 of the Government Code and must release United's remaining information. We have no indication the law, facts, and circumstances on which these rulings were based have changed; however, we note United now seeks to withhold some of the information previously ordered released under section 552.104 of the Government Code. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold United's previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Although United raises section 552.104 of the Government Code for the information at issue, this exception does not prohibit the release of information or make information confidential. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the department may not now withhold the previously released information under section 552.104 of the Government Code. Accordingly, with regard to United's information in the current request that is identical to information previously ruled upon by this office, the department must continue to rely on Open Records Letter No. 2015-16920 and 2015-21777 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* ORD 673. To the extent United's information in the current request was not at issue in these previous rulings, we will address United's arguments against disclosure.

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) 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 only received comments from Aetna, Humana, Blue Cross, and United explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has 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, 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 any portion of the submitted information on the basis of any proprietary interests the remaining third parties may have in it.

Aetna, Humana, Blue Cross, and United each raise section 552.104 of the Government Code, which 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. Aetna, Humana, Blue Cross, and United state they have competitors. Aetna states release of the information it has marked would enable competitors to engineer its proprietary pricing models and infer provider network contracting discounts. Humana contends release of its information would reveal its core business practices and rate development methodology. Blue Cross states release of the information it has marked would provide competitors an unfair advantage by revealing key details about its health insurance business model. United states release of its information would allow competitors to discern the details of its expense margins and product pricing, which could be used to forecast future prices and undercut United. After review of the information at issue and consideration of the arguments, we find Aetna, Humana, Blue Cross, and United have 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 at issue, which we have indicated, under section 552.104(a).<sup>1</sup>

Section 552.137 of the Government Code exempts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the department must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, with regard to United's information in the current request that is identical to information previously ruled upon by this office, the department must continue to rely on Open Records Letter No. 2015-16920 and 2015-21777 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the information we have indicated under section 552.104(a). The department must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. 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.

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,



Joseph Keeney  
Assistant Attorney General  
Open Records Division

JDG/dls

Ref: ID# 599778

Enc: First page of letter December 17, 2015

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