



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

Mr. Jonathan L. Almanza
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Clossner, Room 303
Edinburg, Texas 78539

OR2016-08465

Dear Mr. Almanza:

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# 606076 (ORR# 2016-0009-DA.CO).

The County of Hidalgo (the "county") received a request for the (1) county's life, health, property, and casualty insurance contracts and providers and (2) a copy of agents of record. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Alamo Insurance Group and Blue Cross Blue Shield of Texas ("Blue Cross"). Accordingly, you state, and provide documentation demonstrating, you notified the third parties of the request for information and of their rights to submit arguments to this office stating why the information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Blue Cross. We have considered the submitted arguments and reviewed the submitted information.¹

¹We note Blue Cross contends the county failed to notify certain third parties of the request for information pursuant to section 552.305(d) of the Government Code. *See* Gov't Code § 552.305(d) (providing that "[i]f release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision.") However, neither the county nor Blue Cross inform us, nor can we discern these third parties' proprietary interests would be implicated by the public release of the information at issue. Thus, we find this is not an instance where the county is required to notify these third parties pursuant to section 552.305 of the Government Code.

Blue Cross argues the submitted information is not responsive to the request for information. A governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). In this instance, the county has reviewed its records and determined the submitted information is responsive to the request. Accordingly, we conclude the county has made a good faith effort to relate the request to information the county holds and we will determine whether the county must release the information at issue under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Blue Cross explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 county may not withhold any portion of the submitted information on the basis of a proprietary interest the remaining third party may have in it.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 101.104 of the Civil Practice and Remedies Code provides:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. The county and Blue Cross claim the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under Texas Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 "are not relevant to the availability of the information to the public"). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't

Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (*overruled in part by* Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges). Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

Blue Cross claims some of the submitted information is excepted under section 552.104 of the Government Code. Section 552.104(a) 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. Blue Cross states it has competitors. In addition, Blue Cross states release of the information at issue would provide competitors an unfair advantage over Blue Cross by revealing key details about its proposal. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 832. After review of the information at issue and consideration of the arguments, we find Blue Cross has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have marked under section 552.104(a) of the Government Code.²

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined

²As our ruling is dispositive, we need not address Blue Cross’s remaining arguments against disclosure of this information.

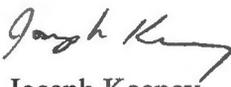
insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the county must withhold the information we marked under section 552.136 of the Government Code.

In summary, the county may withhold the information we have marked under section 552.104(a) of the Government Code. The county must withhold the information we marked under section 552.136 of the Government Code. 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, 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

JDK/dls

Ref: ID# 606076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)