



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Stanton Strickland
Deputy Commissioner
Legal Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-10239

Dear Mr. Strickland:

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# 608644 (TDI #169657).

The Texas Department of Insurance (the "department") received a request for currently in effect and actuarially justified credit scoring models filed by Progressive County Mutual Insurance Company ("Progressive"), a history of increases and/or decreases in the rates for Progressive's automobile program, and specified information pertaining to specified filings.¹ You state you will release some information to the requestor. We understand the department will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² Although the department takes no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of Progressive. Accordingly, you state, and provide documentation showing, the department notified Progressive of the request for information and of its right to submit arguments to this office

¹We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor accepted the cost estimate on February 12, 2016. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

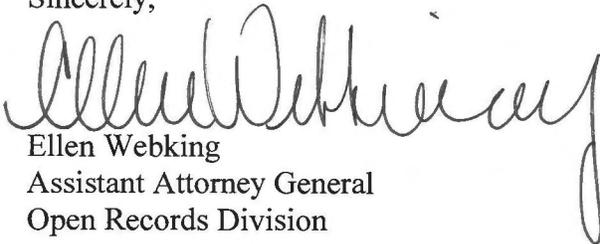
as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Progressive. We have also received comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). 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." *Id.* § 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. Progressive states it has competitors in the insurance business. In addition, Progressive states the information at issue consists of "commercially sensitive information that would be of commercial value to competitors." Progressive further states competitors could "use this information to target key types of consumers and vehicles for their benefit to the detriment of Progressive." After review of the information at issue and consideration of the arguments, we find Progressive 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 indicated under section 552.104(a). As no exceptions have been raised for the remaining information, it 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 608644

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)