



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2016

Mr. David Wheelus
Open Records Attorney
Legal Division MC 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-15115

Dear Mr. Wheelus:

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# 616869 (TDI# 171997).

The Texas Department of Insurance (the "department") received a request for information from a specified time period relating to proposed or implemented increases in life insurance premiums from four named companies. You state the department will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Transamerica Life Insurance Company ("Transamerica"). Accordingly, you state, and provide documentation showing, you notified Transamerica of the request for information and of its rights to submit arguments to 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 Transamerica. We have considered the submitted arguments and reviewed the submitted information.

Initially, Transamerica argues the submitted information is not responsive to the request for information. However, we note the Act requires a governmental body to make a good-faith

effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the department has submitted information for our review, we find the department has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this 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. Transamerica informs us it has competitors. In addition, Transamerica states it operates in a competitive market for life insurance products and if its information is released, its competitors would use it to engineer products harming Transamerica’s competitive position. After review of the information at issue and consideration of the arguments, we find Transamerica 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 submitted information under section 552.104(a) of the Government Code. As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 616869

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)