



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2016

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

OR2016-15934

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# 618503 (TDI# 172500 and 172607).

The Texas Department of Insurance (the "department") received two requests from separate requestors for specified filings. The department states it will make some information available to the requestors. 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 Alinsco Insurance Company ("Alinsco"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its right 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 counsel for Alinsco. We have also considered comments submitted by the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why 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, 839 (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. Alinsco states it has competitors. In addition, Alinsco states its information is “generated from many years of company experience and from proprietary work-product” and “release of such documents would give an advantage to [Alinsco’s] competitors.” After review of the information at issue and consideration of the arguments, we find Alinsco 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.

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# 618503

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)