



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

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Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-0107

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 34432 and 35483.

The Texas Department of Insurance (the "department") received two requests for information concerning the Allstate Insurance Company ("Allstate"). The first request is for the "addresses corresponding to the names your office requested from [Allstate] . . . in the above order [Commissioner's Order No. 94-0466]" (the "consent order") and a copy of the last quarterly report the consent order required Allstate to submit to the department.¹ The department asserts that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code and submitted to this office as a representative sample of the requested information a list of 100 Allstate policyholders that contains among other things the address of each policyholder.² The representative sample does not include the requested copy of Allstate's last quarterly report.

¹We note that the requestor's letter indicates that the requestor made several oral requests to the department for the addresses several months before he committed his request to writing. However, a governmental body's duty under section 552.301 of the Government Code to request a ruling from the attorney general arises only after it receives a written request. *See* Open Records Decision No. 304 (1982).

²Allstate suggests that the requestor is unclear whether he seeks the addresses of 101 Allstate customers who are the subject of a sampling survey the department conducted or the addresses of all

The second request is for "the quarterly reports [Allstate furnished the department pursuant to the consent order] and names of consumers disadvantaged and ordered to be provided to the [d]epartment by Allstate . . . in compliance with the [consent] order." The requested quarterly reports contain the following information: the number of single persons insured for personal automobile insurance by three Allstate companies, the number of single automobile insurance policies written by three Allstate companies, the number of persons with no prior automobile insurance insured for personal automobile insurance by three Allstate companies, the number and identity of persons to whom Allstate makes restitution pursuant to the consent order, and the number of persons with Allstate personal automobile insurance policies and no other insurance policy with Allstate or any company affiliated with Allstate. The department raises no exception to the required public release of this information.

Since the property and privacy rights of a third party, Allstate, are implicated by the release of the requested information here, this office notified Allstate of this request. 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 that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Allstate asserts that the requested information is excepted from required public disclosure based on section 552.110 of the Government Code, as a trade secret.

We consider whether the department must withhold the quarterly reports and the requested list of policyholders and addresses from required public disclosure pursuant to section 552.110 of the Government Code. Section 552.110 of the Government Code excepts a trade secret from required public disclosure. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde*

(Footnote continued)

policyholders Allstate provided the department in its quarterly reports submitted to the department pursuant to Commissioner's Order No. 94-0466. Allstate asserts that if the requestor seeks the latter, the department does not possess the addresses of all of the individuals whose names Allstate submitted to the department pursuant to the consent order and that, furthermore, the Open Records Act does not require the department to obtain these addresses in response to an open records request.

The department has not indicated that it is unclear about what information the requestor seeks. The representative sample of the requested information it submitted to this office is apparently the 100 names and addresses from the sampling survey. As the requestor and the department have been discussing this request for several months, we will assume that the requestor seeks the survey addresses. Of course, the Open Records Act applies only to information in a governmental body's possession. See Open Records Decision No. 555 (1990); Gov't Code § 552.002(a) (defining public information). However, the department has not averred that it does not possess the requested information.

Corp. v. Huffines, 314 S.W.2d 763m 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).³ This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima*

³The Restatement lists the following six factors to be considered in determining whether particular information constitutes a trade secret:

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information;
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

facie case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

We have considered Allstate's arguments that the requested information is a trade secret. We conclude Allstate has established that the list of policyholders attached to the quarterly reports as well as the list of 100 policyholders and addresses are trade secrets. *See id.* Consequently, the department must withhold this information from required public disclosure pursuant to section 552.110 of the Government Code.⁴

As for the other information in the quarterly reports, we conclude that it does not meet the Restatement's definition of a trade secret. The statistical information pertaining to a particular quarter of the years 1994 and 1995 about the number of single persons insured for personal automobile insurance by Allstate companies, the number of single automobile insurance policies written by the Allstate companies, the number of persons with no prior automobile insurance insured for personal automobile insurance by the Allstate companies, the number of persons to whom Allstate made restitution pursuant to the consent order, and the number of persons with Allstate personal automobile insurance policies and no other insurance policy with Allstate or an Allstate affiliated company is "information as to single or ephemeral event in the conduct of [Allstate's] business." Allstate compiled these statistics in order to comply with the Commissioner's consent order; they are not for "continuous use in [Allstate's] business" operation. Accordingly, the department may not withhold the statistical information in the quarterly reports from required public disclosure based on section 552.110 of the Government Code.⁵

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

⁴As we conclude that the department must withhold the list of policyholders and addresses from required public disclosure pursuant to section 552.110, we need not consider your section 552.103 claim. In addition, we note that as you did not submit as part of your representative sample of the requested information for the first request a copy of the requested final quarterly report, we assume that you do not intend to assert section 552.103 in regard to that report. In any case, section 552.103 would not except the report from required public disclosure since that exception does not apply to information the opposing party has seen or had access to. Open Records Decision Nos. 349 (1982), 320 (1982).

⁵Allstate cites Open Records Decision No. 107 (1975) to support its argument that the statistical information is excepted from required public disclosure under section 552.110. We note that in Open Records Decision No. 592 (1991), this office expressly overruled Open Records Decision No. 107 (1975), and determined that to be excepted from disclosure under section 552.110, the requested information must be confidential under the common or statutory law of Texas.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID#s 34432, 35483

Enclosures: Submitted documents

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