



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-0335

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103650.

The Texas Department of Insurance (the "department") received a request for three categories of information, including a list of the rate changes for residential property insurance, broken out by coverage, since July, 1996 for all companies in the top 25 groups, ranked by total homeowners premium. You state that the department will release some of the requested information to the requestor; however, you claim that the remainder of the requested information, the rate change information, is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.

Pursuant to section 552.305 of the Government Code, this office informed Allstate Texas Lloyds ("Allstate") and State Farm Lloyds ("State Farm"), whose information is requested, of the request and of their obligation to submit to this office their arguments as to why any claimed exceptions to disclosure apply to their information. Both companies replied, claiming that sections 552.101 and 552.110 of the Government Code except their rate change information from disclosure.

Section 552.110 excepts from disclosure trade secrets or commercial or financial information obtained from a person and confidential by statute or judicial decision. Allstate and State Farm argue that their information is protected under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office established that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act,

disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993), the same court limited the holding in *National Parks* to that information that is required to be submitted to the government. *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 872 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993). For information that is voluntarily submitted to the government, the court announced a new test: the information must be of a kind that the provider would not customarily make available to the public. *Id.*

Courts have concluded that information is produced to the government voluntarily when it was not produced pursuant to subpoena or to obtain a contract or other benefit from a governmental body. *McDonnell Douglas Corp. v. United State Equal Employment Opportunity Commission*, 922 F. Supp. 235, 241-42 (D. Mo. 1996) (documents produced pursuant to agreement and not to subpoena were produced voluntarily); *Cortez III Service Corp. v. National Aeronautics and Space Administration*, 921 F. Supp. 8, 12-13 (D.D.C. 1996) (general and administrative expense rate ceilings not required to be submitted as part of proposal were submitted voluntarily); *McDonnell Douglas Corp. v. National Aeronautics and Space Administration*, 895 F. Supp. 316, 318 (D.D.C. 1995) (price elements necessary to win a government contract are not voluntary); *Chemical Waste Management, Inc. v. O'Leary*, Civ. A. No. 94-2230 (NHJ), 1995 WL 115894 (D.D.C. Feb. 28, 1995); (price information submitted in response to a requirement in a request for proposals not voluntarily submitted); *Lykes Bros. Steamship Co. v. Pena*, Civ. A. No. 92-2780-TFH, 1993 WL 786964 (D.D.C. Sept. 2, 1993) (documents provided as a requirement to obtain government approval of application not voluntarily produced).

The department has informed this office that the information at issue here was voluntarily submitted in response to a telephone inquiry and not pursuant to either article 1.24 or article 5.131 of the Insurance Code. Therefore, we conclude that the information at issue was voluntarily submitted by State Farm and Allstate to the department.

We must therefore decide whether the test announced in *Critical Mass* is applicable to the requested information: Is the information not customarily released to the public by the person from whom it was obtained? After reviewing the arguments of Allstate and State Farm, we conclude that they both have established that the information in the form requested is not customarily released to the public. Therefore, the department must withhold the requested information under section 552.110 of the Government Code. We note that, to the extent the department has previously released the information to the media in response to inquiries, as is alluded to in Allstate's brief and in correspondence from the department, that information may not be withheld. *See* Gov't Code §§ 552.110,

552.007.¹

We are resolving this matter with an 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 103650

Enclosures: Submitted documents

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¹We conclude that section 552.101 also will not except from required public disclosure any information previously released to the media.

