



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1997

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-1528

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106847.

The Texas Department of Insurance (the "department") received an open records request for the quarterly reports submitted to the department by Allstate Insurance Company ("Allstate") in compliance with Commissioner's Order No. 94-0466. You have requested an open records decision from this office pursuant to section 552.305 of the Government Code, which authorizes governmental bodies to rely on the arguments of a third party to demonstrate how the requested information implicates the party's privacy or proprietary interests and thus is excepted from required public disclosure.

The quarterly reports at issue consist of two types of information: listings of Allstate's policy holders and certain statistical information pertaining to insurance policies written by Allstate. We note at the outset that this office has previously determined that the information revealing the identities of Allstate policy holders contained in the quarterly reports constitute trade secret information and therefore must be withheld from the public pursuant to section 552.110 of the Government Code. *See* Open Records Letter No. 96-0107 (1996). Because of this previous determination, this office need not further address this issue. *See* Gov't Code § 552.301.

This office also determined in Open Records Letter No. 96-0107 (1996) that the statistical information contained in the quarterly reports did not constitute trade secret information. Allstate now argues that the statistical information must be withheld from the public as "commercial or financial information." Section 552.110 of the Government Code

excepts from required public disclosure two categories of information: 1) trade secrets and 2) commercial or financial information. Allstate contends that the statistical information is protected from disclosure by the second prong of section 552.110 as "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The statistical information is clearly "commercial" in nature. To fall within section 552.110, however, it must be "privileged or confidential by statute or judicial decision."

Section 552.110 is patterned after section 552(b)(4) of the federal Freedom of Information Act, 5 U.S.C. § 552 *et. seq.* Open Records Decision Nos. 309 (1982), 107 (1975). This office has adopted the test for determining whether commercial or financial information is confidential within the meaning of section 552(b)(4) as established in *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). *See* Open Records Decision No. 639 (1996). The test for withholding information under *National Parks* is as follows:

a commercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have *either* of the following effects: 1) to impair the Government's ability to obtain necessary information in the future; or 2) to cause substantial harm to the competitive position of the person from whom the information was obtained. [Emphasis added.]

National Parks, 498 F.2d at 770.

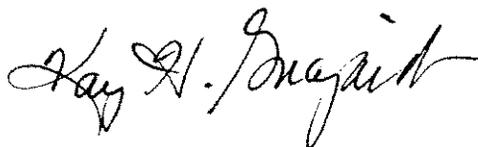
Allstate does not argue that the release of the statistical information would likely result in substantial competitive harm. However, this office recognized in Open Records Decision No. 639 (1996) that the test for withholding commercial or financial information that is *voluntarily* submitted to a governmental body may be withheld from the public under the second prong of section 552.110 if the information meets the test established under *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993). Under the *Critical Mass* test, commercial information is excepted from required public disclosure if the information is voluntarily submitted to the government and the information is of a kind that the provider would not customarily make available to the public. *Critical Mass*, 975 F.2d at 872.

Allstate states that it has voluntarily submitted the statistical information at issue to the department and argues that because it would not customarily release this type of information to the public, the statistical information should come within the protection of section 552.110. We note, however, that Allstate has submitted the information at issue to the department in accordance with a Commissioner's Order that requires the submission of the information. The Commissioner's Order states that the department may cancel Allstate's certificates of authority for failure to comply with the order. You have stated your belief that

in light of the requirements of the order, with which Allstate is required to comply, the statistical information has not been voluntarily submitted to the department. We agree, and therefore conclude that the *Critical Mass* test is inapplicable in this instance. Because Allstate has not argued that the release of the information would likely cause substantial competitive harm, we also conclude that the information may not be withheld under the *National Parks* test. Consequently, the department must release the requested statistical information in its entirety.

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

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/rho

Ref.: ID# 106847

Enclosures: Submitted documents

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