



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2005

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal & Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2005-06584

Dear Ms. Villarreal-Reyna:

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# 228586.

The Texas Department of Insurance (the "department") received a request for rate filing information of the State Farm Group, Allstate Insurance Group ("Allstate"), Progressive Insurance Group ("Progressive"), Zurich/Farmers Group, Berkshire Hathaway Insurance Group ("Geico"), Nationwide Group ("Nationwide"), USAA Group ("USAA"), Liberty Mutual Insurance Companies, and American International Group ("AIG"). You state that "some of the companies do not write auto policies," and thus the department does not have some of the requested information.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.137 of the Government Code. Although you take no position regarding the remaining submitted information, you contend that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified the interested third parties,

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Progressive, Geico, USAA, and AIG, of the department's receipt of the request for information and of each company's right to submit arguments to this office as to why the requested information should not be released to the requestor. *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 correspondence from Geico, USAA, and AIG. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state that some of the information responsive to this request is the identical information that was the subject of two previous requests for information. In Open Records Letter Nos. 2004-3497 (2004) and 2005-03214 (2005) we concluded that Allstate and Colonial County Mutual, which is a part of Nationwide, could withhold their auto underwriting guidelines pursuant to section 552.110. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the department must continue to rely on our decisions in Open Records Letter Nos. 2004-3497 and 2005-03214 with respect to the requested information.<sup>2</sup> *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses you have marked do not appear to be of a type specifically excluded by section 552.137(c). In addition, you inform us that the department has not received consent for the release of the e-mail addresses at issue. Therefore, the department must withhold the e-mail addresses you have marked under section 552.137.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from

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<sup>2</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Progressive has not submitted any arguments to this office explaining how release of the submitted information would affect its proprietary interests. Therefore, Progressive has provided us with no basis to conclude that it has a protected proprietary interest in the submitted information. *See, e.g.*, Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the department may not withhold any of the submitted information based on any proprietary interest Progressive may have in the information.

AIG indicates that it will not assert any exception to disclosure under the Act with regard to the requested information. Thus, the department may not withhold any of the submitted information based on any proprietary interest AIG may have in the information.

Geico and USAA each assert that its respective information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(a) excepts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” Gov't Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). 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. . . . A trade secret is 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); *see also Huffines*, 314 S.W.2d at 776. 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.<sup>3</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). 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 facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude that section 552.110(a) applies unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. See Open Records Decision No. 402 (1983).

Having considered the arguments of Geico and USAA and reviewed the information at issue, we find that the underwriting guidelines of Geico and USAA constitute trade secrets for purposes of section 552.110(a). We thus determine that Geico and USAA have made *prima facie* cases under section 552.110(a) for that information, and we have received no arguments to rebut their claims. Accordingly, the department must withhold the underwriting guidelines of Geico and USAA in the submitted information pursuant to section 552.110(a) of the Government Code.<sup>4</sup>

In summary, assuming that the four criteria for a "previous determination" have been met, the department must continue to rely on our decisions in Open Records Letter Nos. 2004-3497 and 2005-03214 with respect to the requested information. The department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The department must also withhold the underwriting guidelines of Geico and USAA pursuant to section 552.110(a) of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>3</sup>The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of [the company]; (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 [its] competitors; (5) the amount of effort or money expended by [the company] in developing the 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); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

<sup>4</sup>As our ruling is dispositive, we need not address these third parties' arguments under section 552.110(b).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 228586

Enc. Submitted documents

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