



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2010

Ms. Cynthia Villarreal-Reyna
Texas Department of Insurance
Legal Services Division, MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2010-04080

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#373453 (TDI # 99609).

The Texas Department of Insurance (the "department") received a request for all applications for network modifications and all supporting documentation submitted by CorVel Corporation from January 1, 2006 to the date of the request. You state the department will release some of the requested information in accordance with previous decisions from this office. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.137, and 552.147 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of CorVel Corporation ("CorVel"). Accordingly, you inform us, and provide documentation showing, that you notified CorVel of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received arguments from CorVel. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you inform us that some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2007-02239 (2007), 2007-04108 (2007), 2007-09485 (2007), and 2009-00924 (2009). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the department must continue to rely on these rulings as previous determinations and withhold or release this information in accordance with these rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which a prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address the submitted arguments against the disclosure of the remaining information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The department claims that the contracts you have marked are confidential under section 1305.102(k), section 1305.152(a), or section 1305.154(a) of the Insurance Code. Section 1305.102(k) of the Insurance Code provides "[a] management contract filed with the department under this section is confidential and is not subject to disclosure as public information under [the Act]." Ins. Code § 1305.102(k). Section 1305.152(a) of the Insurance Code provides "[a] network shall enter into a written contract with each provider or group of providers that participates in the network. A provider contract under this section is confidential and is not subject to disclosure as public information under [the Act]." *Id.* § 1305.152(a). Section 1305.154(a) of the Insurance Code provides "[e]xcept for emergencies and out-of network referrals, a network may provide health care service to employees only through a written contract with an insurance carrier. A network-carrier contract under this section is confidential and is not subject to disclosure as public information under [the Act]." *Id.* § 1305.154(a). You argue that the contracts you have marked are the types of contracts made confidential under sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code. Based on our review, we find that the contracts you have marked, as well as the additional contracts we have marked, are confidential under these sections of the Insurance Code and must be withheld under section 552.101 of the Government Code. We note that you also seek to withhold correspondence related to the contracts under these sections. However, sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code apply specifically to the listed contracts, and do not make any additional information confidential. Thus, the remaining information may not be withheld on that basis.

Next, the department asserts that some of the submitted information is confidential under section 162.159 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 162.159 provides that "[t]he information collected, maintained, or stored by the [Texas Medical Board] under this subchapter is privileged and confidential and not subject to . . . disclosure under [the Act,] except as otherwise provided

by this subchapter.” Occ. Code § 162.159. This provision only protects information that is in the possession of the Texas Medical Board. In this instance, the submitted information is in the department’s possession, not the Texas Medical Board’s possession. Accordingly, we find that no portion of the submitted information is confidential under section 162.159 of the Occupations Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136.

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). *Id.* § 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. *Id.* § 552.137(c). Section 552.137 also does not apply to an e-mail address “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent” or to an e-mail address “provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor’s agent[.]” *Id.* § 552.137(c)(1), (2). Most of the e-mail addresses you have marked belong to representatives of CorVel, which is in a contractual relationship with the department. These e-mail addresses may not be withheld under section 552.137(c). However, the remaining e-mail addresses, which we have marked, are not of a type specifically excluded by section 552.137(c). Therefore, unless the department receives consent for their release, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.² *Id.* § 552.147(a). Accordingly, the department may withhold the social security numbers in the submitted information under section 552.147 of the Government Code.

CorVel asserts portions of its information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision”

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

and “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(a)-(b).

The Supreme Court of Texas has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees 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 *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private party’s claim for exception as valid under section 552.110(a) if the party establishes a prima facie case for the exception and no one submits an argument that rebuts the claim as a matter of law.³ See Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable

³The Restatement of Torts lists the following six factors 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 other 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 Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

The submitted documents consist of service area expansions plans, access plan information, access provider lists, network and employee information requirements, and information on programs and procedures. Having considered CorVel’s arguments and reviewed the information at issue, we find that portions of the information, which we have marked, meet the definition of a trade secret and are excepted from disclosure pursuant to section 552.110(a). However, CorVel has not shown that any of the remaining information meets the definition of a trade secret. Thus, none of the remaining information may be withheld under section 552.110(a).

CorVel also asserts that its information is excepted from disclosure under section 552.110(b). However, we find that CorVel has only made generalized allegations that the release of the remaining information would result in substantial damage to the competitive position of the company and has provided no specific factual or evidentiary showing to support such allegations. ORD 661 at 5-6 (section 552.110(b) requires specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of information). Thus, we find that CorVel has not demonstrated that substantial competitive injury would likely result from the release of the remaining portions of its information. Accordingly, the department may not withhold any of the remaining information under section 552.110(b).

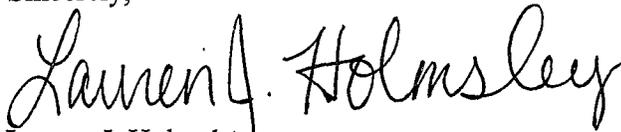
In summary, the department must continue to rely on Open Records Letter Nos. 2007-02239 (2007), 2007-04108 (2007), 2007-09485 (2007), and 2009-00924 (2009) as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The department must withhold the contracts you have marked, as well as the additional contracts we have marked under section 552.101 of the Government Code in conjunction with sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code. The department must withhold the policy numbers we have marked under section 552.136 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code, unless the department receives consent for the

release of the e-mail addresses at issue.⁴ The department must also withhold the information we have marked under section 552.110 of the Government Code. The remaining information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 373453

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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⁴This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including: insurance policy numbers under section 552.136 of the Government Code and e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.