



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 4, 2011

Ms. Cynthia Villarreal-Reyna
Section Chief - Agency Counsel
Legal and Regulatory Affairs
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-06081

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# 416337 (TDI# 112758)

The Texas Department of Insurance (the "department") received a request for information regarding the levels of out-of-network health benefit claims submitted to CIGNA pursuant to any of CIGNA's preferred provider benefit plans in Texas, particularly in fifteen specified zip codes, any access plans submitted by CIGNA or any of CIGNA's preferred provider benefit plans for the service area that includes the North Dallas, Texas area, and any complaints by insureds relating to the availability of preferred providers under any preferred provider benefit plan offered by CIGNA in the North Dallas, Texas area. You state the department has redacted Texas driver's license and license plate numbers under section 552.130 of the Government Code, access device information under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You state the department has released some information to the requestor. While

¹Open Records Decision No. 684 was issued as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, bank account, bank routing, credit card, debit card, and insurance policy numbers under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

you take no position with respect to the public availability of the remaining information, you state that the request may implicate CIGNA's proprietary interests.² Accordingly, you notified CIGNA of this request for information and of its right to submit arguments to this office as to why the information should not be released. *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). CIGNA responded to the notice and argues its information is excepted from disclosure. We have considered the submitted arguments and reviewed the submitted information.

We note CIGNA argues against disclosure of information contained in complaints by insureds. The department has only submitted CIGNA's Health Benefit Plan/Provider Contracting Practices Survey Form. Complaints by insureds were not submitted by the department. This ruling does not address information related to CIGNA beyond what the department submitted to this office for review, and is limited to the information the department submitted as responsive to the instant request. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, we do not address CIGNA's arguments against disclosure of the information not submitted by the department.

We understand CIGNA to assert that the submitted survey is excepted under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of 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 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

²Although you assert section 552.305 of the Government Code, section 552.305 is not an exception under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.*

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 Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). 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.³ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable 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. 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.*; *see also* Open Records Decision No. 661 at 5 (1999).

Upon review, we find CIGNA has failed to demonstrate the information in the submitted survey meets the definition of trade secret, nor has it established a trade secret claim for this information. *See* ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). We also find that CIGNA has made only conclusory allegations that the release of any of the information at issue would result in substantial damage to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of

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 also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

particular information at issue). As no further exceptions to the disclosure of the submitted information have been raised, the department must release it.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 416337

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Susan F. Morris
CIGNA
900 Cottage Grove Road
Hartford, Connecticut 06152
(w/o enclosures)