



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 12, 2012

Ms. Cynthia Villareal-Reyna  
Director, Office of Agency Counsel  
Legal Section, General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2012-07767A

Dear Ms. Villareal-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# 454361 (TDI# 125540 and 125605).

This office issued Open Records Letter No. 2012-07767 (2012) on May 22, 2012. We have examined this ruling and determined an error was made in the decision process. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Accordingly, this decision is substituted for Open Records Letter No. 2012-07767 and serves as the correct ruling.

The Texas Department of Insurance (the "department") received two requests from different requestors for all viatical life settlement provider reports for 2011 and for all viatical life settlement provider reports for 2011, except those for four named companies. You state the department will release some of the information. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified these third parties of the requests and of their right to submit arguments to this office explaining why their

information should not be released.<sup>1</sup> *See* Gov't Code § 552.305 (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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by Coventry, Maple, RiverRock, and ViaSource. We have considered the arguments and reviewed the submitted information.

Initially, we note the second requestor excludes the reports pertaining to Coventry, Life Equity, LSC, and Proverian. Accordingly, these reports are not responsive to the second request. Our ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Berkshire, FairMarket, GWG, Habersham, Imperial, JG Wentworth, Legacy, Longmore, Life Equity, LSC, Lotus, Portsmouth, Proverian, Sandor, Seven Hills, or Spiritus. Thus, none of these third parties has demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interests these third parties may have.

Coventry, Maple, RiverRock, and ViaSource each assert section 552.110 of the Government Code, which 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* Gov't Code § 552.110(a)–(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial

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<sup>1</sup>The department notified the following third parties: Berkshire Settlements (“Berkshire”); Coventry First, LLC and Coventry First of Texas (collectively, “Coventry”); FairMarket Life Settlements Corp. (“FairMarket”); GWG Life Settlements (“GWG”); Habersham Funding, LLC (“Habersham”); Imperial Life Settlements (“Imperial”); JG Wentworth Life Settlements, LLC (“JG Wentworth”); Legacy Benefits Corporation d/b/a Legacy Settlements Corporation (“Legacy”); Life Equity, LLC (“Life Equity”); Life Settlement Corporation (“LSC”); Longmore Capital, LLC (“Longmore”); Lotus Life, LLC (“Longmore”); Maple Leaf Financial, Inc. (“Maple”); Portsmouth Settlement Company (“Portsmouth”); Proverian Capital (“Proverian”); RiverRock Partners, LLC (“RiverRock”); Sandor Management, L.L.C. (“Sandor”); Seven Hills Settlement (“Seven Hills”); Spiritus Life, Inc. (“Spiritus”); and ViaSource Funding Group, LLC (“ViaSource”).

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 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.<sup>2</sup> 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 No. 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

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<sup>2</sup>The 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).

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. *See id.*; *see also* ORD 661 at 5.

Upon review, we find none of these companies has demonstrated any of the submitted information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim. *See* RESTATEMENT OF TORTS § 757 cmt. b, 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). Accordingly, the department may not withhold any of the submitted information under section 552.110(a) of the Government Code. Upon further review, we find Coventry has demonstrated the release of its broker information would cause substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, none of the third parties has demonstrated how any of the remaining information constitutes commercial or financial information, the disclosure of which would cause it substantial competitive harm. Accordingly, the department may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).<sup>3</sup> Gov’t Code § 552.137(a)–(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. The remaining responsive 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.

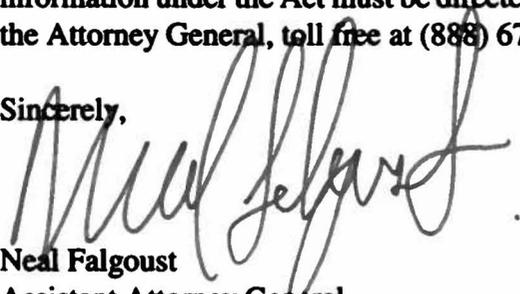
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/sdk

Ref: ID# 454361

Enc. Submitted documents

c: 2 Requestors  
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