



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2014

Mr. Fred M. Barker
First Assistant County Attorney
County of Parker
1118 West Columbia Street
Weatherford, Texas 76086

OR2014-01173

Dear Mr. Barker:

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# 511322.

The Parker County Fire Marshal's Office (the "fire marshal's office") received a request for a specified fire investigation report. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified State Farm Lloyds ("State Farm") and Vaisala, Inc. ("Vaisala"), of the request for information and of their right to submit arguments to this office as to why the submitted 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). We have received comments from State Farm. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Vaisala explaining why its information should not be released. Therefore, we have no

basis to conclude Vaisala has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the fire marshal's office may not withhold any of the information at issue on the basis of any proprietary interest Vaisala may have in it.

State Farm contends the submitted information is subject to section 2001.006 of the Insurance Code. 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. Section 552.101 encompasses information made confidential by other statutes, such as section 2001.006 of the Insurance Code. Section 2001.006 reads in relevant part as follows:

(a) The state fire marshal, a fire marshal of a political subdivision of this state, the chief of a fire department in this state, or a peace officer in this state may request an insurer investigating a fire loss of property in which damages or losses exceed \$1,000 to release information in the insurer's possession relating to that loss. The insurer shall release the requested information and cooperate with the official. The requested information may include only:

- (1) an insurance policy relevant to the fire loss under investigation and any application for a policy;
- (2) policy premium payment records;
- (3) the history of the insured's previous claims for fire loss; and
- (4) material relating to the investigation of the loss, including:
 - (A) statements of any person;
 - (B) proof of loss; or
 - (C) other relevant evidence.

...

(e) An official or a department or agency employee who receives information under this section shall maintain the confidentiality of the information until the information is required to be released in a criminal or civil proceeding.

...

(g) A person may not intentionally:

...

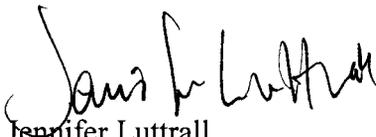
(4) fail to maintain the confidentiality of information that is confidential under Subsection (e).

Ins. Code § 2001.006(a), (e), (g)(4). You state the submitted information consists of State Farm's investigation report of a certain fire in Weatherford, Texas. You also state the fire marshal's office requested State Farm to submit this information to it. State Farm states the submitted information consists of its investigation report of a fire in which damages or losses of property exceeded \$1,000. State Farm also states it provided the submitted information to the fire marshal's office at the request of the fire marshal's office pursuant to subsection 2001.006(a) of the Insurance Code. Upon review of these representations and the information at issue, we find subsection 2001.006(e) requires the fire marshal's office to maintain the confidentiality of the submitted information until the information is required to be released in a criminal or civil proceeding. *See id.* § 2001.006(e). Consequently, as we have no indication the information at issue has been required to be released in a criminal or civil proceeding, we conclude the fire marshal's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with subsection 2001.006(e) of the Insurance Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 511322

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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