



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2014

Mr. Stanton Strickland  
Associate Commissioner  
Legal Section, General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2014-08540

Dear Mr. Strickland:

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# 523079 (TDI Reference No. 146631).

The Texas Department of Insurance (the "department") received a request for specified individual health filings.<sup>1</sup> The department states it will withhold personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> The department indicates it has made some of the requested information available to the requestor, but does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the department states, and provides documentation showing, it notified the following third parties of the department's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released: Community First Health Plans; Community Health Choice ("Community Health"); CT Corporation System; Connecticut General Life Insurance Company; Scott and White Health Plans ("Scott and White"); and Superior HealthPlan, Inc. ("Superior"). *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

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<sup>1</sup>The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

of exception in the Act in certain circumstances). We have received correspondence from Community Health and Scott and White objecting to the release of some of the information at issue. We have reviewed the submitted arguments and information.<sup>3</sup>

We note the department initially submitted information pertaining to Memorial Hermann Health Insurance Company ("Memorial") with its request for a ruling. However, the department subsequently informed us Memorial's information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release Memorial's information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

We also note Scott and White seeks to withhold information that the department did not submit for our review. This ruling does not address information beyond what the department has submitted to us for review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.*

We next 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 it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, only Community Health and Scott and White have submitted to this office reasons explaining why the requested information should not be released. We also note we received correspondence from Superior informing us it would send arguments to withhold the information at issue at a later date. However, as of the date of this letter, Superior has not submitted to this office reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of the remaining third parties, and the department may not withhold any portion of the submitted information on that basis. *See 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 that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Section 552.110 of the Government Code protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or

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<sup>3</sup>The department acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See Gov't Code* § 552.301(b), (e). Nonetheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the arguments of the interested third parties to withhold the information at issue.

financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code 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>4</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office 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. ORD 552 at 5-6. However, we cannot conclude section 552.110(a) applies unless it has been shown 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) excepts from disclosure “[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). Section 552.110(b) requires a specific factual or evidentiary showing,

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<sup>4</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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Upon review, we find Community Health has established the release of some of the information at issue would cause it substantial competitive injury. Therefore, the department must withhold this information, which we have marked, under section 552.110(b). However, Community Health and Scott and White have failed to establish release of any of the remaining information would cause substantial competitive injury. *See* Gov't Code § 552.110(b). Scott and White has also not shown any of the remaining information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See id.* § 552.110(a). Therefore, the department may not withhold any of the remaining information pursuant to section 552.110. Accordingly, the department must release the remaining information to the requestor.

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 523079

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Nancy Wingstrom, JD  
Senior Vice President  
Administration & Legal Affairs  
Community Health Choice  
2636 South Loop West, Suite 900  
Houston, Texas 77054  
(w/o enclosures)

Ms. Susan M. Erickson  
Plan General Counsel  
Superior HealthPlan, Inc.  
2100 South IH-35, Suite 200  
Austin, Texas 78704  
(w/o enclosures)

Mr. August G. Gieseman  
President  
Community First Health Plans  
12238 Silicon Drive, Suite 100  
San Antonio, Texas 78249  
(w/o enclosures)

Mr. Matthew Manders  
President  
Connecticut General Life  
Insurance Company  
900 Cottage Grove Road  
Bloomfield, Connecticut 06002  
(w/o enclosures)

Ms. Marianne R. Williams  
Interim President/CEO  
Scott and White Health Plan  
1206 West Campus Drive  
Temple, Texas 76502  
(w/o enclosures)

Mr. Bruce McCandless III  
Counsel for Memorial Hermann Health  
Insurance Company  
Mitchell, Williams, Selig, Gates &  
Woodyard, P.L.L.C.  
106 East 6<sup>th</sup> Street, Suite 300  
Austin, Texas 78701  
(w/o enclosures)

CT Corporation System  
For Connecticut General Life Insurance  
Company  
350 North St. Paul Street  
Dallas, Texas 75201  
(w/o enclosures)