



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2014

Ms. Ann Manning  
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OR2014-09864

Dear Ms. Manning:

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# 525221.

The Lubbock Independent School District (the "district"), which you represent, received a request for (1) the district's current student athletic accident insurance policy and (2) total student athletic accident insurance losses and annual premiums for a specified time period. You claim the information submitted in Exhibit B is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of Universal Fidelity Life Insurance Company and its affiliates, Fidelity Security Life Insurance Company and Unified Life Insurance Company, operating as Texas Kids First (collectively, "UFLIC"). Accordingly, you notified UFLIC of the request and of its right to submit arguments to this office explaining why its information should not be released. *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 comments on behalf of UFLIC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district has submitted as responsive to the request a single document entitled "Claims History Report[.]" We assume, to the extent any additional responsive information existed when the district received the request for information, the district has released it to the requestor. If not, then the district must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by statute. The district and UFLIC raise section 552.101 of the Government Code in conjunction with section 1215.002 of the Insurance Code.

Chapter 1215 of the Insurance Code is found in title 8 of the Insurance Code, which concerns health insurance and other health coverages. Section 1215.002 provides in relevant part as follows:

(a) This chapter applies to a governmental entity that enters into a contract with a health insurance issuer that results in the health insurance issuer delivering, issuing for delivery, or renewing a group health plan.

...

(c) A report of claim information provided under this section to a governmental entity is confidential and exempt from public disclosure under [the Act].

*See* Ins. Code § 1215.002(a), (c). “Group health plan” has the meaning assigned by section 160.103 of title 45 of the Code of Federal Regulations, except that the term does not include disability income or long-term care insurance. *See id.* § 1215.001(a)(3). Section 160.103 of title 45 of the Code of Federal Regulations states a group health plan “means an employee welfare benefit plan (as defined in . . . 29 U.S.C. [§] 1002(1)) . . . to the extent that the plan provides medical care . . . to employees or their dependents . . .” 45 C.F.R. § 160.103; *see id.* § 1215.001(a)(5) (defining “plan” for purposes of chapter 1215 as an employee welfare benefit plan as defined in 29 U.S.C. § 1002(1)). Section 1002(1) of title 29 of the United States Code states “employee welfare benefit plan” and “welfare plan” mean any insurance plan an employer establishes or maintains for the purpose of providing benefits for its employees. *See* 29 U.S.C. § 1002(1). Thus, section 1215.002(c) makes confidential a report of claims made under an employee welfare benefit plan. Ins. Code § 1215.002(c); *see also id.* § 1215.003 (concerning receipt of and response to request for claim information).

The claim information at issue concerns claims UFLIC paid under an accident-only insurance policy.<sup>1</sup> Under this policy, UFLIC provides the district benefits for injuries sustained while an eligible person engaged in the play or practice of certain interscholastic athletics and activities or while being transported in a vehicle provided by the school for the purpose of participating in such athletics and activities. An eligible person is a registered district student who participates in certain interscholastic activities and athletics. Thus, the information at

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<sup>1</sup>You submitted, and we reviewed, a copy of the insurance policy UFLIC issued the district.

issue does not concern claims UFLIC paid under an employee welfare benefit plan designed to provide benefits to district employees. *See id.* § 1215.001(a)(1), (3); *see also* 29 U.S.C. § 1002(1), 45 C.F.R. § 160.103. Consequently, the information at issue is not a report of claim information UFLIC provided the district under section 1215.002. Therefore, we conclude the district and UFLIC have failed to demonstrate section 1215.002(c) is applicable to the submitted information. Accordingly, the district may not withhold the information at issue under section 552.101 of the Government Code on that basis.

The district next claims the submitted information, which you describe as “personnel information[,]” is excepted from disclosure under section 552.102 of the Government Code.<sup>2</sup> Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we find no portion of the submitted information is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the information at issue on that basis.

UFLIC also raises 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* 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 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

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<sup>2</sup>We note the district did not comply with section 552.301 of the Government Code in raising section 552.102 of the Government Code as an exception to disclosure. *See* Gov’t Code § 552.301(b). Nonetheless, because section 552.102 can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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>3</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim 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 section 552.110(a) is applicable 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. 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 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

Upon review, we find UFLIC has failed to establish a *prima facie* case its information meets the definition of a trade secret, nor has UFLIC demonstrated the necessary factors to establish a trade secret claim for its 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). Accordingly, the district may not withhold any of the submitted information under section 552.110(a) of the Government Code.

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<sup>3</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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Further, we find UFLIC has not established the release of the information at issue would cause the company substantial competitive injury. Accordingly, the district may not withhold any of the submitted information under section 552.110(b) of the Government Code. The district must, therefore, release the submitted 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 525221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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