



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Bob Davis
Staff Attorney
Office of Agency Counsel
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-09136

Dear Mr. Davis:

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# 563129 (TDI #159072).

The Texas Department of Insurance (the "department") received a request for a specified set of rules and rate filings for Progressive County Mutual Insurance Company ("Progressive"). You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Progressive. Accordingly, you state, and provide documentation showing, you notified Progressive of the request for information and of the company's 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 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). We received correspondence from counsel for Progressive, informing us it would send arguments against disclosure of the information at issue at a later

date. However, as of the date of this letter, Progressive has not submitted to this office reasons explaining why the submitted information should not be released. Therefore, we have no basis to conclude Progressive 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, that release of the requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest Progressive may have in it.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Thus, the department must release the submitted information, but may only release any copyrighted information in accordance with copyright law.

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,

A handwritten signature in cursive script that reads "Abigail T. Adams".

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 563129

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jay A. Thompson
For Progressive County Mutual Insurance Company
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(w/o enclosures)