



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Mr. Bob Davis  
Staff Attorney  
Office of Agency Counsel  
Legal Section  
General Counsel Division  
Texas Department of Insurance  
MC 110-1C  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2015-15420

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# 573592 (TDI# 161562).

The Texas Department of Insurance (the "department") received a request for a list of the top 10 companies or groups selling named driver policies in Texas. 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 certain third parties. Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of the right of each 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 representatives of four third parties. We have reviewed the submitted information and the submitted arguments.

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 received comments from only four third parties. Therefore, we have no basis to conclude any of the other third parties notified of the request by the department 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 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 interest the remaining third parties may have in the information.

Next, we note that two of the third parties have informed our office that these companies do not object to release of the information at issue. Accordingly, we have no basis to conclude either of these third parties has a protected proprietary interest in the submitted information. We further note that one of the third parties argues only that the company should not be included on the list at issue. However, the question of whether a given entity should be included on the requested list is a question of fact. This office cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Therefore, as the department has included the third party at issue on the list provided to this office as responsive to the request, we will rule on the information pertaining to this third party. As this third party has provided no further arguments against release of the submitted information, we find this third party has not demonstrated it has a protected proprietary interest in the submitted information.

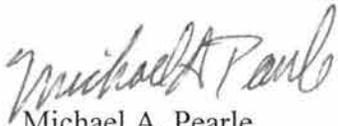
The remaining third party argues against release of information revealing it is on the requested list under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial 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. *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, that release of requested information would cause that party substantial competitive harm). The third party asserts that release of the information at issue would amount to a disclosure of the company’s insurance marketing strategy and sales information, which would give the company’s competitors an unfair advantage in the marketplace. Upon review, however, we find the third party has not demonstrated the release of the information at issue would result in

substantial harm to its competitive position. Accordingly, the department may not withhold any of submitted information pertaining to this third party under section 552.110(b). As no further arguments against disclosure have been made, the department must 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/eb

Ref: ID# 573592

Enc. Submitted documents

c: Requestor  
(w/o enclosures)