



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 25, 2015

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

Mr. Stanton Strickland  
Associate Commissioner - Legal Section  
General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104, Mail Code 110-1A  
Austin, Texas 78714-9104

OR2015-20187

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# 580706 (TDI No. 163358).

The Texas Department of Insurance (the "department") received a request for credit scoring models and related documents for specified GEICO insurance companies. You state the department released some information to the requestor. You inform us the department will redact e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You state the department does have any responsive information pertaining to GEICO General Insurance Company and GEICO Casualty Insurance Company.<sup>2</sup> You claim the submitted information is protected by copyright law. You also state release may implicate the proprietary interests of Government Employees Insurance Company, GEICO Advantage Insurance Company, GEICO Choice Insurance

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Company, GEICO Secure Insurance Company, and Colonial County Mutual Insurance Company (collectively, "GEICO"). Accordingly, you notified GEICO of the request for information and of its 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 Act in certain circumstances). We have received comments from GEICO. We have considered the submitted arguments and reviewed the submitted information.

Initially, GEICO informs us some of the information at issue may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2005-06584 (2005) and 2006-13521 (2006). To the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior rulings, we conclude that, as we have no indication the law, facts, or circumstances on which the prior rulings were based have not changed, the department must continue to rely on Open Records Letter Nos. 2005-06584 and 2006-13521 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the information at issue is not encompassed by the previous rulings, we will address the arguments against disclosure.

GEICO claims its information is excepted from disclosure under 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 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 that 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 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).

GEICO argues some of its information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find GEICO has demonstrated some of its information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the department must withhold the information we have indicated under section 552.110(b). However, we find GEICO has not established any of its remaining information at issue constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. *See* ORD 661

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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).

(for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, none of GEICO's remaining information at issue may be withheld under section 552.110(h) of the Government Code.

GEICO also claims some of its remaining information constitutes trade secrets under section 552.110(a). Upon review, we conclude GEICO has failed to establish a *prima facie* case any of the remaining information meets the definition of a trade secret, nor has GEICO demonstrated the necessary factors to establish a trade secret claim for its information. *See* RESTATEMENT OF TORTS § 757 cmt. b; 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 department may not withhold any of the remaining information under section 552.110(a) of the Government Code.

The department and GEICO both contend some of the remaining information 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.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2005-06584 and 2006-13521, the department must continue to rely on those rulings as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The department must withhold the information we have indicated under section 552.110(b) of the Government Code. The department must release the remaining information; however, any information protected by copyright may only be released 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\\_our\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_our_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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 580706

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Government Employees Insurance Company  
GEICO Indemnity Company  
GEICO Advantage Insurance Company  
GEICO Choice Insurance Company  
GEICO Secure Insurance Company  
GEICO County Mutual Insurance Company  
Colonial County Mutual Insurance Company  
c/o Ms. Melony Cargil Perry  
Perry Law P.C.  
10440 North Central Expressway, Suite 1120  
Dallas, Texas 75231  
(w/o enclosures)

JAN 31 2017

CAUSE NO. D-1-GN-15-004479

At 1:44 P.M.  
Velva L. Price, District Clerk

**GOVERNMENT EMPLOYEES** §  
**INSURANCE COMPANY, GEICO** §  
**ADVANTAGE INSURANCE** §  
**COMPANY, GEICO CHOICE** §  
**INSURANCE COMPANY, GEICO** §  
**SECURE INSURANCE COMPANY,** §  
**GEICO CASUALTY COMPANY,** §  
**GEICO COUNTY MUTUAL** §  
**INSURANCE COMPANY, GEICO** §  
**GENERAL INSURANCE** §  
**COMPANY, AND GEICO** §  
**INDEMNITY COMPANY** §  
*Plaintiffs,* §

**IN THE DISTRICT COURT**

**98<sup>th</sup> JUDICIAL DISTRICT**

v. §

**KEN PAXTON, ATTORNEY** §  
**GENERAL OF TEXAS, AND THE** §  
**TEXAS DEPARTMENT OF** §  
**INSURANCE,** §  
*Defendants.* §

**TRAVIS COUNTY, TEXAS**

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**AGREED FINAL JUDGMENT**

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This is an open records lawsuit brought under the Public Information Act, Tex. Gov't Code ch. 552 (the "PIA"). Plaintiffs Government Employees Insurance Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO Secure Insurance Company, GEICO Casualty Company, GEICO County Mutual Insurance Company, GEICO General Insurance Company, and GEICO Indemnity Company (collectively "Plaintiffs" or "GEICO") filed suit against Defendants Ken Paxton, in his official capacity as Attorney General of Texas (the "Attorney General"), and Texas Department of Insurance (the "TDI") (collectively, "Defendants"), challenging Attorney General Open Records Letter Ruling OR2015-20187.



GEICO filed this lawsuit to prevent the TDI's disclosure of GEICO's underwriting guidelines, underwriting tier model, and related information. All matters in controversy arising from this lawsuit have been resolved, and the parties agree to the rendition and entry of this Agreed Final Judgment.

Texas Government Code §552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after receiving notice of the proposed settlement. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code §552.325(c), the Attorney General sent notice by certified letter to the requestor, Cindy Jaramillo of Carter Wolden Curtis, LLP ("Jaramillo"), on JANUARY 9, 2017, providing reasonable notice of this setting.

Jaramillo was informed of the parties' agreement that the TDI must withhold GEICO's underwriting guidelines, underwriting tier model, and related information from public disclosure. Jaramillo was also informed of her right to intervene in this lawsuit to contest the withholding of the information. Jaramillo has neither informed the parties of her intention to intervene, nor has a plea in intervention been filed.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment disposing of all claims between the parties is appropriate.

IT IS THEREFORE ADJUDGED, ORDERED, AND DECLARED THAT:

1. GEICO's underwriting guidelines, underwriting tier model, and related information are excepted from disclosure pursuant to Tex. Gov't Code §552.104. Specifically, the documents that shall be withheld by the TDI from public disclosure pursuant to Tex. Gov't Code §552.104 are: the December 20, 2010, confidential letter from Triana Woodard to Ken Burton and the 35-page, confidential "Government Employees Insurance Company Underwriting Company Placement Model" attached to the letter, as well as the 29-page, confidential "GEICO Texas Group Guide to Auto Risk Selection" also attached to the letter (hereinafter, the "Excepted Information");

2. The TDI must withhold the Excepted Information as described in Paragraph 1 of this Agreed Final Judgment, as well as the information found to be confidential by Open Records Letter Ruling OR2015-20187, from Jaramillo and all other requestors;
3. All court costs and attorneys' fees are taxed against the party incurring same;
4. All relief not expressly granted is denied; and,
5. This Agreed Final Judgment finally disposes of all claims between GEICO, the Attorney General, and the TDI in this case, and is a final judgment.

Signed this 31<sup>ST</sup> day of January, 2017.

  
 JUDGE PRESIDING

**AGREED AS TO FORM AND SUBSTANCE**

  
 WILLIAM P. JOHNSON  
 SBN: 24002367  
 DUGGINS WREN MANN & ROMERO, LLP  
 P.O. Box 1149  
 Austin, TX 78767  
 512.744.9300 (T)  
 512.744.9399 (F)  
 bjohnson@dwmrlaw.com

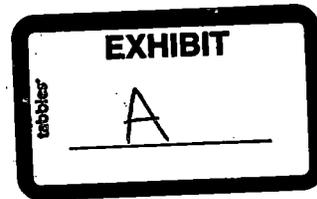
ATTORNEY FOR PLAINTIFFS GOVERNMENT  
 EMPLOYEES INSURANCE COMPANY, GEICO  
 ADVANTAGE INSURANCE COMPANY, GEICO  
 CHOICE INSURANCE COMPANY, GEICO  
 SECURE INSURANCE COMPANY, GEICO  
 CASUALTY COMPANY, GEICO COUNTY  
 MUTUAL INSURANCE COMPANY, GEICO  
 GENERAL INSURANCE COMPANY, AND  
 GEICO INDEMNITY COMPANY

  
 MATTHEW R. ENTSMINGER  
 SBN: 24059723  
 Chief, Open Records Litigation  
 ATTORNEY GENERAL OF TEXAS  
 P.O. Box 12548, Capitol Station  
 Austin, Texas 78711-2548  
 512.475.4151 (T)  
 512.457.4686 (F)  
 matthew.entsminger@oag.texas.gov

ATTORNEY FOR DEFENDANT KEN PAXTON,  
 ATTORNEY GENERAL OF TEXAS

  
 ANN HARTLEY  
 SBN: 09157700  
 Assistant Attorney General  
 Financial Litigation and Charitable  
 Trust Division  
 ATTORNEY GENERAL OF TEXAS  
 P.O. Box 12548, Capitol Station  
 Austin, Texas 78711-2548  
 512.936.1313 (T)  
 512.477.2348 (F)  
 ann.hartley@oag.texas.gov

ATTORNEY FOR DEFENDANT TEXAS  
 DEPARTMENT OF INSURANCE



CAUSE NO. D-1-GN-15-004479

GOVERNMENT EMPLOYEES  
INSURANCE COMPANY, GEICO  
ADVANTAGE INSURANCE  
COMPANY, GEICO CHOICE  
INSURANCE COMPANY, GEICO  
SECURE INSURANCE COMPANY,  
GEICO CASUALTY COMPANY,  
GEICO COUNTY MUTUAL  
INSURANCE COMPANY, GEICO  
GENERAL INSURANCE  
COMPANY, AND GEICO  
INDEMNITY COMPANY  
*Plaintiffs,*

v.

KEN PAXTON, ATTORNEY  
GENERAL OF TEXAS, AND THE  
TEXAS DEPARTMENT OF  
INSURANCE,  
*Defendants.*

IN THE DISTRICT COURT

98<sup>th</sup> JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

---

**SETTLEMENT AGREEMENT**

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This Settlement Agreement (“Agreement”) is made by and between Plaintiffs, Government Employees Insurance Company, GEICO Advantage Insurance Company, GEICO Choice Insurance Company, GEICO Secure Insurance Company, GEICO Casualty Company, GEICO County Mutual Insurance Company, GEICO General Insurance Company, and GEICO Indemnity Company (collectively “Plaintiffs” or “GEICO”), and Defendants Ken Paxton, in his official capacity as Attorney General of Texas (the “Attorney General”), and Texas Department of Insurance (the “TDI”) (collectively, “Defendants”). This Agreement is made on the terms set forth below.

## **BACKGROUND**

The TDI received a request under the Public Information Act, Tex. Gov't Code ch. 552 (the "PIA") from Cindy Jaramillo of Carter Wolden Curtis, LLP ("Jaramillo"). Jaramillo requested, in relevant part, GEICO's underwriting guidelines, underwriting tier model, and related information. TDI requested an open records ruling from the Attorney General pursuant to PIA, Tex. Gov't Code §552.301. The TDI also notified GEICO, pursuant to Tex. Gov't Code §552.305, of GEICO's right to submit comments to the Attorney General explaining why any portion of the requested information should be withheld from public disclosure. GEICO submitted comments to the Attorney General asserting that the underwriting guidelines, underwriting tier model, and related information were excepted from public disclosure under previous Attorney General decisions and under Tex. Gov't Code sections 552.110(a), 552.110(b), and 552.137.

The Attorney General issued Open Records Letter Ruling OR2015-20187 in response to the TDI's request. The Attorney General found GEICO had demonstrated that a portion of the requested information was excepted from disclosure pursuant to Tex. Gov't Code §552.110(b). The ruling concluded, however, that the remaining requested information was not excepted from required disclosure.

GEICO disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-15-004479, *Government Employees Insurance Company, et al. vs. Ken Paxton, et al.*, in the 98<sup>th</sup> Judicial District Court of Travis County, Texas (the "Lawsuit"), to preserve its rights under the PIA. Tex. Gov't Code §552.325(c) allows the parties to enter into a settlement under which the information at issue in the Lawsuit may be withheld. The parties wish to resolve the Lawsuit without further litigation.

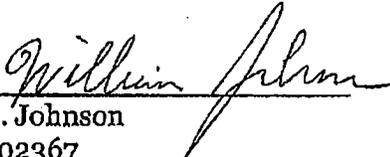
## TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The Attorney General, GEICO, and the TDI have agreed that GEICO's underwriting guidelines, underwriting tier model, and related information, if released, would give an advantage to a competitor or bidder, and are excepted from public disclosure pursuant to Tex. Gov't Code § 552.104. Specifically, the documents that shall be withheld by the TDI from public disclosure pursuant to Tex. Gov't Code §552.104 are: the December 20, 2010, confidential letter from Triana Woodard to Ken Burton and the 35-page, confidential "Government Employees Insurance Company Underwriting Company Placement Model" attached to the letter, as well as the 29-page, confidential "GEICO Texas Group Guide to Auto Risk Selection" also attached to the letter (hereinafter, the "Excepted Information");
2. The TDI must withhold from Jaramillo and all other requestors the Excepted Information described in Paragraph 1 of this Agreement, as well as the information found to be confidential by Open Records Letter Ruling OR2015-20187;
3. GEICO, the Attorney General, and the TDI agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to Jaramillo;
4. The Attorney General agrees to notify Jaramillo, as required by Tex. Gov't Code §552.325(c), of the proposed settlement and of her right to intervene in the Lawsuit, should she contest the withholding of the Excepted Information, as described in Paragraph 1 of this Agreement;
5. Should Jaramillo intervene in the Lawsuit, a final judgment entered in the Lawsuit will prevail over this Agreement, to the extent of any conflict;
6. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation;
7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement;
8. GEICO warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement;

9. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement;
10. The TDI warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of the TDI and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement; and,
11. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned parties signs this Agreement.

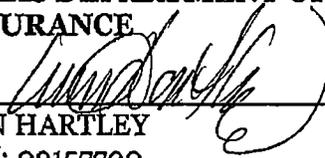
**GEICO**

By:   
William P. Johnson  
SBN: 24002367  
DUGGINS WREN MANN & ROMERO, LLP  
P.O. Box 1149  
Austin, TX 78767  
512.744.9300 (T)  
512.744.9399 (F)  
bjohnson@dwmrlaw.com

**KEN PAXTON ATTORNEY  
GENERAL OF TEXAS**

By:   
MATTHEW R. ENTSMINGER  
SBN: 24059723  
Chief, Open Records Litigation  
Administrative Law Division  
ATTORNEY GENERAL OF TEXAS  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
512.475.4151 (T)  
512.457.4686 (F)  
matthew.entsminger@oag.texas.gov

**TEXAS DEPARTMENT OF  
INSURANCE**

By:   
ANN HARTLEY  
SBN: 09157700  
Assistant Attorney General  
Financial Litigation and Charitable  
Trust Division  
ATTORNEY GENERAL OF TEXAS  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
512.936.1313 (T)  
512.477.2348 (F)  
ann.hartley@oag.texas.gov