



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

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

OR2015-21796

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# 583525 (TDI# 164157).

The Texas Department of Insurance (the "department") received a request for all documents from credit scoring models and related documents filed by six Allstate insurance companies ("Allstate"). You state the department will release some information. You further state the department will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ Although the department takes no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of Allstate. Accordingly, you state, and provide documentation showing, the department notified Allstate of the request for information and of its right to submit arguments to this office as to why the information at issue 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

¹Open 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.

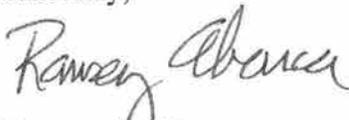
exception in the Act in certain circumstances). We have received comments from Allstate. We have considered the submitted arguments and reviewed the submitted information.²

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Allstate states it has competitors in the insurance business. In addition, Allstate states release of the information at issue “would provide an immediate competitive advantage to Allstate’s competitors.” Allstate further states allowing third parties access to its credit-based insurance scoring models would cause it “irreparable competitive harm in the marketplace.” After review of the information at issue and consideration of the arguments, we find Allstate has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude department may withhold the submitted information under section 552.104(a).

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

²We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling. *See* Gov’t Code § 552.301(b), (e). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the submitted arguments for the submitted information. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

Ref: ID# 583525

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Kendra Roberts
Attorney
Allstate Life & Retirement
Allstate Life Insurance Company
2775 Sanders Road, Suite A2E
Northbrook, Illinois 60062
(w/o enclosures)