



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2015

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

OR2015-21924

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# 583528 (TDI # 164161).

The Texas Department of Insurance (the "department") received a request for all documents related to credit scoring models and compliance with section 559.052 of the Insurance Code for named third parties. You state you will release some information. You also state the department is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> Although you take no position regarding the submitted information, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Nationwide Property and Casualty Insurance Company and Nationwide Lloyds (collectively "Nationwide") of the request for information and of their rights 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

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<sup>1</sup>We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments submitted by Nationwide. We have considered the submitted arguments and reviewed the submitted information.<sup>2</sup>

Initially, we note section 559.152 of the Insurance Code provides:

A credit scoring model filed to comply with [chapter 559 of the Insurance Code], as of the date the filing is received by the department:

- (1) is public information;
- (2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and
- (3) cannot be withheld from disclosure under any other law.

Ins. Code § 559.152. Further, section 5.9352 of title 28 of the Texas Administrative Code states, in relevant part:

(b) An insurer that files a credit scoring model or references a model that has been filed with [the department] by another entity on behalf of another insurer in this state must submit the following information with the filing:

- (1) the filing transmittal information required in [section] 5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements);
- (2) whether the insurer uses the score resulting from the model for underwriting, rating, or tiering; and
- (3) a completed questionnaire, used to verify compliance with Insurance Code Chapter 559.

(c) Each filing, and any supporting information filed with it, is open to public inspection as of the date of the filing. To the extent that a filing submitted through [System for Electronic Rate and Form Filing] includes contact information, the filer affirmatively consents to the release and disclosure of the contact information, including any email addresses. The filer also

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<sup>2</sup>We note, and the department acknowledges, the department has not complied with the time periods prescribed by section 552.301 of the Government Code with respect to the submitted information. *See Gov't Code § 552.301*. Nonetheless, because third party interests can provide compelling reasons to overcome the presumption of openness, we will consider arguments submitted by Nationwide. *See id* §§ 552.007, .302, .352.

certifies that each person associated with an email address that appears in the filing has affirmatively consented to the release and disclosure of that email address.

28 T.A.C. § 5.9352(b)-(c). *See also* § 5.9351(b) (defining “credit scoring model”). Thus, a credit scoring model, and supporting information filed with it, are open to the public and may not be withheld under the Act. In this instance, the requestor seeks, in part, information filed as part of named companies’ credit scoring models. The department does not state, and we are unable to determine, whether the submitted information was filed as part of the credit scoring models of the companies at issue. Therefore, we must rule conditionally. If the submitted information consists of credit scoring models filed to comply with chapter 559, or supporting information filed with the credit scoring models, then the submitted information is subject to section 559.152 and section 5.9352(b). Although Nationwide argues sections 552.104 and 552.110, section 559.152 states a credit scoring model filed pursuant to chapter 559 may not be withheld under the Act or other law. Further, section 5.9352(b) states information filed with the credit scoring model is open to public inspection. Thus, in this instance, as exceptions in the Act do not apply to information other statutes make public, the submitted information may not be withheld based on Nationwide’s arguments under section 552.104 or section 552.110. *See* Open Records Decision No. 623 at 3 (1994), 525 at 3 (1989). To the extent the submitted information is not credit scoring models filed to comply with chapter 559 or supporting information filed with the credit scoring models, we will address Nationwide’s arguments against disclosure of the submitted information.

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, 841-42 (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. Nationwide states it has competitors in the business of automobile and homeowner insurance. In addition, Nationwide states release of the submitted information would give an advantage to these competitors. After review of the information at issue and consideration of the arguments, we find Nationwide has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a).<sup>3</sup>

In the event the submitted information was filed to comply with chapter 559 of the Insurance Code or consists of supporting information filed with the credit scoring models, you state

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<sup>3</sup>As our ruling is dispositive, we need not address the third party’s remaining argument against disclosure.

portions of the submitted information may be protected by copyright.<sup>4</sup> 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, if the submitted information is not credit scoring models filed to comply with chapter 559 of the Insurance Code or supporting information filed with the credit scoring models, the department may withhold the submitted information under section 552.104(a). If the submitted information is credit scoring models filed to comply with chapter 559 or supporting information filed with credit scoring models, then the submitted information must be released; however, any information subject to copyright may be released only 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

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<sup>4</sup> We note a state statute is preempted by federal law to the extent it conflicts with federal law. See, e.g., *Equal Employment Opportunity Comm'n v. City of Orange*, 905 F. Supp. 381, 382 (E.D. Tex. 1995).

Ref: ID# 583528

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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