



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Mr. David Wheelus
Open Records Attorney
Office of Agency Counsel
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-18057

Dear Mr. Wheelus:

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# 622984 (TDI# 171061).

The Texas Department of Insurance (the "department") received a request for twenty-five specified filings. You state the department has released some responsive information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of GEICO. Accordingly, you state, and provide documentation showing, 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 the Act in certain circumstances). We have received comments from GEICO. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note GEICO argues against the release of information that was not submitted by the department. This ruling does not address information that was not submitted by the department and is limited to the information the department has submitted for our review.

See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. GEICO states it has competitors. In addition, GEICO states release of its underwriting tier model and related information would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find GEICO 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 information GEICO has indicated under section 552.104(a) of the Government Code.

We understand the department will withhold the e-mail address you have marked under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ However, we note the remaining information contains additional e-mail addresses that are subject to section 552.137 of the Government Code.² Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note section 552.137(c) provides section 552.137(a) does not apply to an e-mail address provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public. *Id.* § 552.137(c)(4). Some of the e-mail addresses at issue are not of a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the department may withhold the information GEICO has indicated under section 552.104(a) of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining information must be released.

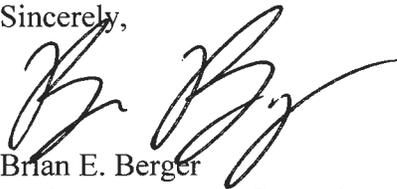
¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 622984

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)