



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 2, 1996

Ms. Christine T. Rodriguez  
Staff Attorney  
Legal Services, 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-1381

Dear Ms. Rodriguez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40606.

The Texas Department of Insurance (the "department") received a request for "any and all complaints filed against State Farm Fire and Casualty Company for their conduct in the processing or settling of claims made under homeowner insurance policies from January 1994 through the present." Sample complaint documents were submitted to this office for review.<sup>1</sup> You state that information responsive to the request may implicate the proprietary interests of State Farm Fire and Casualty Company ("State Farm").

As provided by section 552.305 of the Open Records Act, this office provided State Farm the opportunity to submit reasons as to why the information at issue should be withheld. State Farm contends that the information at issue is excepted from disclosure pursuant to sections 552.101, 552.110 and 552.117.

Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 refers to two types of information: (1) trade secrets,

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision Nos. 639 (1996); 592 (1991) at 2.

In regard to the trade secret aspect of section 552.110, this office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure).

The Texas Supreme Court has adopted the definition of the term "trade secret" from the Restatement of Torts, section 757 (1939), 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 a single or ephemeral event 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 or specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's business]; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken [by the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be property acquired or duplicated by others.

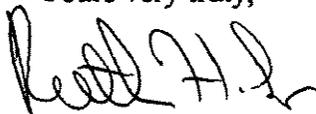
*Id.* *See also* Open Records Decision No. 522 (1989).

State Farm has made a prima facie case that the names, addresses and telephone numbers of policyholders contained in the complaint files is protected under the trade secret prong of section 552.110. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). The names, addresses, and telephone numbers of State Farm policyholders contained in the documents at issue thus may not be disclosed. Open Records Decision No. 552 (1990).

We note that State Farm has not shown that the remaining information in the files is a trade secret. Nor did State Farm argue that the remaining information is protected under the commercial or financial aspect of section 552.110. *See* Open Records Decision No. 639 (1996) at 4. We also note that the representative records submitted to this office contain home addresses and home telephone numbers of State Farm policyholders but not third parties. As the names and addresses in the documents submitted are already protected from disclosure under sections 552.110, we need not address State Farm's assertion that sections 552.101 and 552.117 makes confidential home addresses and home telephone numbers.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 40606

Enclosures: Submitted documents

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