



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance Division, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-1367

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was formerly assigned ID# 33550, but is currently assigned ID# 107105.

The Texas Department of Insurance (the "department") received a request for the underwriting guidelines of several county mutual insurance companies, including Northern County Mutual Insurance Company, Great Texas County Mutual Insurance Company, Colonial County Mutual Insurance Company, Southern County Mutual Insurance Company, Progressive County Mutual Insurance Company, and Northwestern County Mutual Insurance Company.¹ Pursuant to section 552.305 of the Government Code, this office notified each insurance company of this request in order to provide the companies an opportunity to assert any privacy or property interest in the information. That notification stated that if the company does not respond to the notification, we will assume that the company has no privacy or property interest in the information. Four companies did not respond to our notification: Great Texas County Mutual Insurance Company, Colonial County Mutual Insurance Company, Progressive County Mutual Insurance Company, and Northwestern County Mutual Insurance Company. We assume that these companies have no privacy or property interest in the information. Consequently, the department may not withhold from disclosure the requested information that concerns these four county mutual insurance companies.

¹This office has determined that the underwriting guidelines of county mutual insurance companies are not made confidential under article 1.24D of the Insurance Code. See Open Records Decision No. 653 (1997).

Both Northern County Mutual Insurance Company and Southern County Mutual Insurance Company responded to our notification by asserting that the requested information constitutes a trade secret. Section 552.110 of the Government Code excepts trade secrets from required public disclosure. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

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, . . . [but] 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 (1939). The Restatement also lists six factors to be considered in determining whether particular information constitutes a trade secret.² *Id.* This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

We have reviewed the companies' arguments. We conclude that Southern County Mutual Insurance Company has established that its underwriting guidelines are trade secrets that the department must withhold from public disclosure based on section 552.110 of the Government Code. However, Northern County Mutual has failed to establish that its underwriting guidelines are trade secrets; therefore, the department may not withhold the Northern County Mutual Insurance Company's information.

²The six trade secret factors are as follows: 1) the extent to which the information is known outside of [the company's] business; 2) the extent to which it is known by employees and others 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 to [its] competitors; 5) the amount of effort or money expended by [the company] in developing this information; 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID#s 107105, 33550

Enclosures: Submitted documents

cc: Mr. Joseph C. Boggins
De Leon & Boggins
221 West 6th Street, Suite 1050
Austin, Texas 78701
(w/o enclosures)

Mr. Stephen M. Lundregan
Colonial County Mutual Insurance
2390 East Orangewood Avenue
Anaheim, California 92806
(w/o enclosures)

Mr. Peter B. Lewis
Progressive County Mutual Insurance
6300 Wilson Mills Road
Mayfield Village, Ohio 44143
(w/o enclosures)

Mr. Jack Fulton
Southern County Mutual Insurance
2727 Turtle Creek
Dallas, Texas 75219
(w/o enclosures)

Mr. Carey D. Benson
Northern County Mutual Insurance
P.O. Box 224046
Dallas, Texas 75222
(w/o enclosures)

Mr. Carl Henry Lindner, III
Great Texas County Mutual Insurance
11661 Preston Road, Suite 120
Dallas, Texas 75230
(w/o enclosures)

Mr. Richard Kuninger
Northwestern National County Mutual
P.O. Box 14846
Austin, Texas 78767-4846
(w/o enclosures)