



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 1, 1997

Ms. Ann Bright  
Legal and Compliance, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR97-2206

Dear Ms. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109810.

The Texas Department of Insurance (the "department") received a request for information relating to Allstate Companies. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You also state that Allstate may have a proprietary interest in some of the information. Therefore, pursuant to section 552.305, you ask whether the department must release this information. We have considered the exceptions you and Allstate claim and have reviewed the documents you seek to withhold.

Since the property and privacy rights of a third party are implicated by the release of some of the requested information, this office notified Allstate of this request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Although Allstate claims it has not reviewed the information at issue, the company asserts that its underwriting guidelines are excepted from disclosure by section 552.110 of the Government Code and Ins. Code art. 1.24D.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of

Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.* After reviewing Allstate's arguments and the submitted materials, we find that Allstate has not met its burden under the commercial and financial information prong of section 552.110.

You also state that the requested documents contain trade secret information. This office cannot conclude that information is a trade secret unless the governmental body or company has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

Next, we address Allstate's argument that the information is confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Article 1.24D of the Insurance Code makes confidential "copies of an insurer's underwriting guidelines." We are unable to determine which documents are "underwriting guidelines." Therefore, to the extent that the requested information is subject to article 1.24D, it must be withheld under section 552.101.<sup>1</sup> The remaining information must be released.

In its initial brief to this office, the department raised section 552.103. You have recently informed this office that litigation involving Allstate for alleged violations of state insurance laws has concluded. You have also informed us that the department is no longer asserting section 552.103. Consequently, the department may not withhold the information pursuant to section 552.103(a).

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<sup>1</sup>We note that after the exhaustion of all appeals, guidelines that were used as evidence in the successful prosecution of an Insurance Code violation are no longer presumed to be confidential. *See* Ins. Code art. 1.24D(b).

We are resolving this matter with an 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/alg

Ref.: ID# 109810

Enclosures: Submitted documents

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