



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1997

Ms. Mary Keller
Senior Associate Commissioner
Texas Department of Insurance
Legal and Compliance
MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2227

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108254.

The Texas Department of Insurance (the "department") received a request for the 1994 and 1995 Annual Aggregate Experience ("AAE") Reports and the Annual Reconciliation Reports ("ARR") of County Mutuals. You explain that some of the requested information may be proprietary in nature and protected from disclosure by the Government Code. Gov't Code § 552.007; Gov't Code § 552.305. You raise no exception to disclosure on behalf of the department, and make no arguments regarding the proprietary nature of the requested information. You have submitted for our review a representative sample of the two reports at issue. The reports contain insurance experience data, including current and historical earned premiums, benchmark premiums, and loss data broken down by year, company, type of insurance coverage, and type of vehicle.¹

Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified the insurance companies whose company information was requested. *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

¹We 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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

applicability of exception in Open Records Act in certain circumstances). This office has received six responses to the notification. They include: Allstate County Mutual, Consumer's County Mutual, Farmer's Texas County Mutual, Fireman's Fund County Mutual, Progressive County Mutual, and Southern County Mutual. In a letter to this office, the requestor states that he is only seeking the AAE and ARR reports of Managing General Agents. He explains, therefore, that he seeks the reports of only ten companies. They are: Colonial County Mutual, Consumer's County Mutual ("Consumer's"), Gainsco County Mutual, Great Texas County Mutual, Home State County Mutual, Northern County Mutual, Old American County Mutual, Southern County Mutual ("Southern"), State & County Mutual, and USAA (Ameristar) County Mutual. The requestor does not seek information from Allstate County Mutual, Farmer's County Mutual, Fireman's County Mutual, or Progressive County Mutual through this request. Thus, this ruling does not address these companies' arguments nor does it address the release of these companies' report information.

Some of the ten companies involved did not respond to our notice; therefore, we have no basis to conclude that these companies' information is excepted from disclosure. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party 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), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. The AAE and ARR report information for Colonial County Mutual, Gainsco County Mutual, Great Texas County Mutual, Home State County Mutual, Northern County Mutual, Old American County Mutual, State & County Mutual, and USAA (Ameristar) County, must therefore, be released to the requestor.

Both Consumer's and Southern raise section 552.110 as an exception to disclosure of its AAE and ARR report information. Both companies claim that their report information is protected as a trade secret. Section 552.110 protects the property interests of private parties 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.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, 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 of 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). If a governmental body takes no position with regard to the application of the “trade secrets” branch of section 552.110 to requested information, we 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 one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.²

Consumer’s and Southern argue that the requested information is of value to their company and to their competitors because it would reveal the companies’ “classification of risks into appropriate territories.” The companies argue that this value joined with their additional arguments under the restatement’s factors establish that the requested reports are trade secret information. The companies argue that they do not wish for their exposure or experience data to be revealed by territories. The requestor in this instance, however, points out that the requested report information merely discloses “statewide-aggregate information” and does not reveal any sub-state region. The requestor explains that no “territorial rating issues” are implicated.³ After examining the submitted materials, it appears that no territorial exposure or experience information would be revealed by release of the reports at issue. Consequently, since the requestor does not seek information that would reveal experience data by sub-state regions, it is not apparent that the requested information has value to the companies or their competitors. We do not believe that Consumer’s or Southern has established that their report information *as requested* is protected trade secret information under section 552.110 of the Government Code. The requested information must be released.

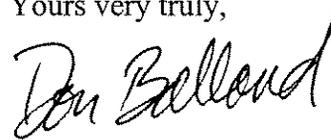
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: “(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other 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 [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

³This office has also received a letter from the Office of Public Insurance Counsel wherein it joins in the requestor’s characterization of the type of information requested.

under the facts presented to us in this request and should 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 108254

Enclosures: Submitted documents

cc: Mr. Birny Birnbaum
Consulting Economist
3304 Gilbert Street
Austin, Texas 78703
(w/o enclosures)

Mr. Kenneth Lovoy
Office of Public Insurance Counsel
333 Guadalupe, Suite 3-120
Austin, Texas 78701-3942
(w/o enclosures)

All third party Insurance Companies