



August 2, 1999

Mr. Clark Jobe  
Executive Director  
Texas Insurance Purchasing Alliance  
1005 Congress Avenue, Suite 550  
Austin, Texas 78701

OR99-2174

Dear Mr. Jobe:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126128.

The Texas Insurance Purchasing Alliance (the "Alliance") received multiple requests for a list of all current employer members who are or are not represented by an agent of record. You claim that the requested client list is excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

552.110 protects the property interests of *third 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. 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. Thus, this office relied on *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), as a judicial decision and applied the standard set out in *National Parks* to determine whether information is excepted from public disclosure under the commercial and financial prong of section 552.110. However, the Third Court of Appeals recently held that *National Parks* is not a judicial decision within the meaning of section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.--Austin May 20, 1999, no pet. h.). Because

you have not cited to a statute or judicial decision that makes the commercial or financial information privileged or confidential, the Alliance may not withhold the requested information under the commercial or financial information prong of section 552.110.

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).<sup>1</sup>

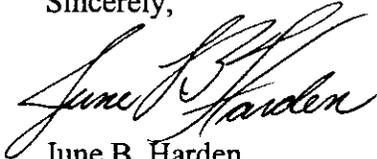
The submitted client list consists of two types of information: employer groups that are represented by an agent and those groups that are not represented by an agent. After reviewing the information and your arguments, we conclude that the Alliance has established that a list of those employer groups represented by an agent is a trade secret because it is a customer list of those agents. The Alliance must, therefore, withhold this information under section 552.110. *See* Open Records Decision No. 552 (1990). However, the Alliance has not established that a list of those employer groups that are not represented by an agent constitute a trade secret of a third party; therefore, that information must be released to the requestors.

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<sup>1</sup>The 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 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 [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 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 126128

Encl. Submitted computer diskettes

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