



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 30, 2002

Ms. R. Yvette Clark
General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR2002-7461

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174097.

Stephen F. Austin State University (the "university") received a request for information regarding insurance coverage for the period from September 1, 1998 to the present. In particular, the requestor asks for any and all documents regarding liability insurance coverage for members of the university administration and faculty. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practices and Remedies Code. You also claim that the release of the information may implicate the proprietary interests of third party vendors. You state, and provide documentation showing, that you have notified third parties of the request and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by third party Royal & SunAlliance. *See Gov't Code § 552.305.*

Initially, we note that some of the information at issue is expressly public under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body

Some of the submitted insurance information consists of information in contracts relating to the expenditure of funds by a governmental body. Therefore, as prescribed by section 552.022, this information must be released to the requestor unless it is expressly confidential under other law. You raise section 552.101 of the Government Code, and Royal & SunAlliance claims in its comments that a portion of the submitted information may be excepted from disclosure pursuant to section 552.110 of the Government Code. Sections 552.101 and 552.110 make information confidential and can therefore be used to except information subject to section 552.022 from disclosure. Thus, we will address both of these exceptions with respect to all of the submitted information, including information subject to section 552.022.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that other statutes make confidential. You contend that the requested information is confidential pursuant to section 101.104 of the Texas Civil Practice and Remedies Code, which provides as follows:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

Section 101.104 provides that insurance information is not discoverable or admissible as evidence during litigation proceeding under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.--Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act).

Section 101.104, however, is a civil discovery privilege and does not make insurance information expressly confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 551 at 3 (1990)* (provisions of section 101.104 "are not relevant to the availability of the information to the public"); *see also* Attorney General Opinion JM-1048 (1989); *Open Records Decision Nos. 647 at 2 (1996)* (information that may be privileged in the civil discovery context may not be withheld from disclosure pursuant to section 552.101 of the Government Code), *575 at 2 (1990)* (stating explicitly that discovery privileges are not covered under statutory predecessor to section 552.101). We note that the Texas Supreme Court has determined that the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence "are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001).

However, section 101.104 of the Civil Practices and Remedies Code is not such a privilege. Thus, we determine that the university may not withhold any of the information under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

Next, third party Royal & SunAlliance advises that portions of the requested information may be "protected proprietary information" excepted from public disclosure pursuant to section 552.110 of the Government Code. 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. Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See* Gov't Code § 552.110(a). This office must accept a claim that information subject to the Public Information Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983). Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Royal & SunAlliance has not demonstrated that any portion of the requested information is excepted from disclosure as a trade secret under section 552.110(a). Furthermore, Royal & SunAlliance has not demonstrated based on specific factual evidence that any portion of the requested information is excepted from disclosure under section 552.110(b). Accordingly, the university may not withhold the requested information pursuant to section 552.110 of the Government Code.

We note that some of the submitted documents contain e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 protects the interests of third parties and provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the university must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.

The submitted documents also contain vehicle identification numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a). The university must withhold vehicle identification numbers relating to motor vehicles registered in the State of Texas pursuant to section 552.130 of the Government Code.

Finally, we note that some of the information at issue is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the marked e-mail addresses must be withheld under section 552.137 of the Government Code. Vehicle identification numbers relating to motor vehicles registered in the State of Texas must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor, but the university must comply with the copyright law and is not required to furnish copies of information that is protected by copyright.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 174097

Enc: Submitted documents

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