



ATTORNEY GENERAL OF TEXAS
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Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Compliance Division
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2005-07653

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 230950.

The Texas Department of Insurance (the "department") received a request for the homeowner rate filings filed in response to the April 2005 department order by three named entities. You state that you will release the entire filings for one named entity. You state that you will release most of the filings for another named entity, but claim that the marked portions of the filings are excepted from disclosure under section 552.137 of the Government Code. Additionally, you state that the remaining requested information may contain proprietary information. Thus, pursuant to section 552.305 of the Government Code, you notified Farmers Insurance Exchange ("Farmers"), of the request and of the company's 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 section 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 received correspondence from counsel for Farmers. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that Farmers claims that the submitted updated experience data is not responsive to the instant request because the request asks for the "April 2005 Ordered Homeowners Rate Filings." The department represents to us, however, that the submitted information relating to Farmers is responsive to this request for information. Accordingly, we must rely on the department's determination that the submitted information relating to Farmers is responsive to this request. *See* Open Record Decision No. 590 at 1 n. 1 (1991) (stating that in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds).

Farmers also claims that its updated experience data is protected from public disclosure under section 552.110 of the Government Code. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

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).

After reviewing the information at issue and Farmers' arguments, we find that Farmers has made a specific factual or evidentiary showing that the release of its updated experience data would cause the company substantial competitive harm. Thus, this information must be withheld pursuant to section 552.110(b).¹

The department claims that the two marked e-mail addresses in the remaining information are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The marked e-mail addresses are not the type specifically excluded by section 552.137(c). The documents reflect that one of the individuals did consent to the release of her e-mail address, and thus, this e-mail address must be released. The documents reflect that the other individual did not consent to the release of her e-mail address. Thus, the department must withhold this e-mail

¹Because our ruling is dispositive, we need not address your additional argument against disclosure.

address, which we have marked, in accordance with section 552.137 of the Government Code.

In summary, the department must withhold Farmers' updated experience data under section 552.110(b) of the Government Code. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 230950

Enc. Submitted documents

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