



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2006

Ms. Cynthia Villarreal-Reyna
Section Chief-Agency Counsel
Legal & Compliance Division, MC 110-1A
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR.2006-00135

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# 239674.

The Texas Department of Insurance (the "department") received a request for the latest rate filings of Fred Loya Insurance, Direct General Insurance Agency, and First Acceptance Insurance. You explain that the department is providing the requestor with the rate filing for Fred Loya Insurance. You also inform us that the department does not have any information responsive to the request for the filing of First Acceptance Insurance.¹ You believe that the submitted information, which pertains to the filing of Direct General Insurance Agency, may implicate the proprietary interests of Old American County Mutual Fire Insurance Company ("Old American"). Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the department notified Old American of the request for information and of its right to submit arguments explaining why the information concerning the company should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

information should not be released); *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 in certain circumstances). You also claim that some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered arguments submitted by Old American. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2005-6148 (2005), 2005-05349 (2005), and 2005-03512 (2005). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in those prior rulings, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, you must continue to rely on Open Records Letter Nos. 2005-6848, 2005-05349, and 2005-03512 as previous determinations. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information was not the subject of the prior rulings, we will address the submitted arguments.

First, we address the arguments submitted by Old American. Old American asserts that some of the submitted information is protected under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (2) “commercial 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.” *See* Gov't Code § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, 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 also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If the governmental body takes no position on the application of the “trade secrets” component of section 552.110 to the information at issue, this office will accept a private party’s claim for exception as valid under that component if that party establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law.² *See* Open Records Decision No. 552 at 5 (1990). The private party must provide information that is sufficient to enable this office to conclude that the information at issue qualifies as a trade secret under section 552.110(a). *See* Open Records Decision No. 402 at 3 (1983).

Having considered Old American’s arguments and reviewed the information at issue, we find Old American has established that its underwriting guidelines and rules in the submitted information constitute trade secrets for purposes of section 552.110(a). We thus determine that Old American has made a *prima facie* case under section 552.110(a) for that information and we have received no arguments to rebut that claim. Accordingly, the department must withhold Old American’s underwriting guidelines and rules in the information at issue pursuant to section 552.110(a) of the Government Code.³

The department asserts that some of the remaining information at issue is excepted under section 552.137 of the Government Code. This section 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

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (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 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

³As we reach this conclusion, we need not address Old American’s remaining arguments against disclosure.

release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked does not appear to be of a type specifically excluded by section 552.137(c). In addition, you inform us that the department has not received consent for the release of the e-mail address at issue. Therefore, the department must withhold the e-mail address you have marked under section 552.137.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Record Letter Nos. 2005-6148, 2005-05349, and 2005-03512, the department must continue to rely on those rulings as previous determinations. Otherwise, the department must withhold (1) the underwriting guidelines and rules of Old American pursuant to section 552.110(a) of the Government Code and (2) the e-mail address you have marked pursuant to section 552.137 of the Government Code. The remaining submitted information must be released.

Old American also asks this office to issue a previous determination permitting the department to withhold the company's underwriting guidelines and rules without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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 ten 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); *Texas 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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 239674

Enc. Submitted documents

c: Mr. Christopher Link
1402 Chickasaw Drive
Richardson, Texas 75080
(w/o enclosures)

Mr. Bruce McCandless III
Counsel for Old American County Mutual Fire Insurance Company
Long, Burner, Parks & DeLargy, P.C.
P. O. Box 2212
Austin, Texas 78768-2212
(w/o enclosures)