



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

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

OR2009-00924

Dear Ms. Waitt:

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# 332933 (TDI Request #83901).

The Texas Department of Insurance (the "department") received a request for the contact information for all providers and facilities in all Workers' Compensation Networks that have been certified or are in the process of being certified. You do not take a position as to whether the submitted information is excepted from public disclosure under the Act; however, you state, and provide documentation showing, that you notified all interested third parties of the department's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released

to the requestor.¹ We received correspondence from Hartford and its subsidiary, SRS. We have considered all of the submitted arguments and have reviewed the submitted information.²

Initially, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the third parties.

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received comments

¹The following third parties were notified: Argus Provider Network; Bunch and Associates, Inc. and Bunch HCN - First Health; CMI Baron Rich Management; Comp Key/First Health d/b/a Forte Inc.; Corvel Healthcare Corporation/Corcare/The Lone Star Network/Corvel; Coventry Workers' Comp Network; Genex Services, Inc./Genex Care for Texas Comp Access; Genex Services, Inc./Genex Health Care Network; First Health TX HCN, First Health/Travelers HCN; First Health/CSS; First Health/AIGCS TX HCN; The Hartford Workers' Compensation Health Care Network; IMO Med-Select Network/Injury Management Organization, Inc.; International Rehabilitation Associates, Inc./Intracorp; Intracorp Lockheed Martin Aero Employee Select Network; Liberty Health Care Network; Majoris Helath Systems, Inc.; Memorial Hermann Health Network Providers, Inc.; Prime Health Services, Inc.; Texas Star Network; Services Corporation; Speciality Risk Services Texas Workers' Compensation Health Care Network; Zurich Services Corporation Health Care Network; Zurich Service Corporation Health Care Network (HCN) - First Health; Zurich Services Corporation Health Care Network/Corvel; and Workers Care Network for Houston Independent School District.

²We 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.

only from Hartford and its subsidiary, SRS. None of the remaining third parties have submitted to this office any reasons explaining why their submitted information should not be released. Therefore, these remaining companies have failed to provide us with any basis to conclude that they have protected proprietary interests in any of the submitted information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, we conclude that the department may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.110(a) excepts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” Gov’t Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is:

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 single or ephemeral events in the conduct 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 Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement’s definition of trade secret as well as the Restatement’s list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors to be assessed in determining whether information qualifies as 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 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.

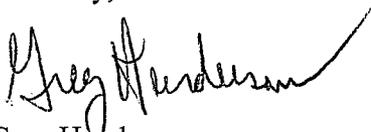
RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. 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).

Having reviewed the arguments made by Hartford and SRS and the information at issue, we find that Hartford and SRS have failed to demonstrate that any portion of their information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for this information. Thus, the department may not withhold any portion of Hartford's and SRS's information under section 552.110(a) of the Government Code. As no further arguments have been raised for the disclosure of the submitted information, it must be released in its entirety to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID# 332933

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)

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CMI Barrin Risk Management, Inc.
SouthWest Medical Provider Network
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San Antonio, Texas 78109
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Coventry Workers' Comp Network
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Genex Health Care Network
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