



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2009

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2009-16357

Dear Mr. Bowman:

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# 361581 (TDLR ID# 5801).

The Texas Department of Licensing and Regulation (the "department") received a request for information pertaining to tire warranty products and operations conducted by IAS, L.P. ("IAS"). You state you released some of the requested information. You claim the marked information is excepted from disclosure under section 552.101 of the Government Code. In addition, you assert that release of some of the requested information may implicate the proprietary interests of IAS. Accordingly, you state you notified IAS of this request for information and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested 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 Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We 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.

Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to “ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.” Gov’t Code § 552.301(b). While the department raised section 552.101 in conjunction with section 1304.104 of the Occupations Code and 552.110 within the ten-business-day time period as required by subsection 552.301(b), the department did not raise section 552.101 in conjunction with section 2306.052 of the Occupations Code until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See* Gov’t Code § 552.352; Open Records Decision No. 574 at n.4 (2001) (mandatory exceptions). Because section 552.101 is a mandatory exception, we will consider the department’s argument under section 552.101 in conjunction with section 2306.052 notwithstanding its violation of section 552.301(b) in asserting that claim.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 1304.104 of the Occupations Code provides information concerning the number of service contracts sold by a provider submitted to the department under section 1304.103 “is a trade secret to which section 552.110, Government Code, applies.” Occ. Code § 1304.104(1). Similarly, section 2306.052 of the Occupations Code provides that “[i]nformation concerning the number of vehicle protection products sold by a warrantor submitted under [section 2306.052(a)] is a trade secret and subject to Section 552.110, Government Code.” *Id.* § 2306.052(b). Section 552.110(a) of the Government Code exempts from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov’t Code § 552.110(a).

All the submitted documents pertain to IAS’s registration, either as a service contract provider for purposes of chapter 1304 of the Occupations Code, or as a vehicle protection product warrantor for purposes of chapter 2306. IAS represents it provided the submitted Service Contract Provider Registration Renewal Application to the department pursuant to section 1304.103 of the Occupations Code, and that the highlighted information in this application consists of the number of service contracts sold by IAS, or the amount of registration fee paid by IAS. IAS also represents this registration fee indirectly reveals the number of service contracts sold by IAS. Additionally, you represent the Vehicle Protection Product Warrantor Registration Applications were provided to the department by IAS pursuant to section 2306.052. You also represent the information you highlighted in the Vehicle Protection Product Warrantor Registration Applications either directly reveals the number of vehicle protection products sold by IAS, or reveals information which can be used to determine the number of vehicle protection products sold by IAS. Based on these representations and our review, we agree the highlighted information concerns either the number of service contracts sold by a provider or the number of vehicle protection products sold by a warrantor, and thus consists of trade secrets for the purposes of section 552.110(a).

Thus, the department must withhold the highlighted information in the Vehicle Protection Product Warrantor Registration Applications and the highlighted information in the Service Contract Provider Registration Renewal Application under section 552.110(a) of the Government Code. As you raise no other exceptions to disclosure, the remaining submitted information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 361581

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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