



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2010

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal & Regulatory Affairs Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2010-04733

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# 374803 (TDI # 100166).

The Texas Department of Insurance (the "department") received a request for the rate filings numbered 2761356-0, 2764674-0, 2721230-40, 2721230-4, 2719405-2, and 2721237-24. You state the department has released some responsive information to the requestor. Although you take no position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Blue Cross and Blue Shield of Texas ("Blue Cross"). Thus, pursuant to section 552.305 of the Government Code, you notified Blue Cross of the request and of the company's right to submit arguments to this office as to why its information should not be released. 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 the Act in certain circumstances). We have reviewed the submitted information and considered the arguments submitted by Blue Cross.

Blue Cross objects to disclosure of some information in rate filing number 2764674-0 on the basis of section 552.110 of the Government Code. Section 552.110 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).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). 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). This office will accept a private person’s claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.¹ Open Records Decision No. 402 (1983).

¹The 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 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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

The information Blue Cross asserts is excepted from disclosure consists of four pages of a proposal suggesting a change in how Blue Cross determines demographic factors for spouses.² These pages consist of a purpose statement, the current and proposed demographic formulas, and actuarial representations regarding the purpose, legality, and anticipated effects of the proposed formula. Upon review, we marked the portions of these documents that reflect specific processes and methodologies used by Blue Cross in determining spouse demographic factors. We find Blue Cross has adequately demonstrated this information is a trade secret, and the department must withhold the marked information under section 552.110(a) of the Government Code. The remaining information, however, consists of general statements as to the legality and effects of the proposed changes, and does not contain any specific information or insight regarding Blue Cross processes or methods. Blue Cross has not explained how this remaining information meets the definition of a trade secret. *See* ORD 552. Accordingly, the remaining information may not be withheld under section 552.110(a).

Blue Cross also claims the remaining information is subject to section 552.110(b). However, Blue Cross has not shown how release of the remaining statements will likely result in competitive injury to the company. Thus, Blue Cross has not made the specific factual or evidentiary showing required by section 552.110(b) that substantial competitive injury would result from the release of any of the remaining information. *See* ORD 661. Accordingly, none of the remaining information may be withheld under section 552.110(b).

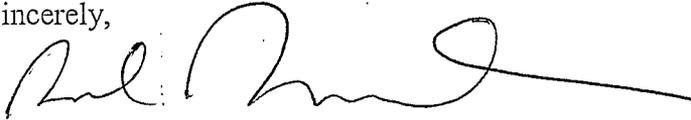
In summary, the department must withhold the information we marked under section 552.110(a) of the Government Code. The remaining submitted information must be released.

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.

²We note Blue Cross also seeks to withhold the cover page of this proposal. However, the department has not submitted this document for our review. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Thus, because the cover page was not submitted by the governmental body, this ruling does not address this document, and is limited to the information submitted as responsive by the department.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 374803

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)