



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2010

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

OR2010-10471

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# 386576 (TDI # 99609).

The Texas Department of Insurance (the "department") received a request for all applications for network modifications and all supporting documentation submitted by CorVel Corporation ("CorVel") from January 1, 2006 to the date of the request. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of CorVel. Accordingly, you inform us, and provide documentation showing, that you notified CorVel of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d) (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 to disclosure in certain circumstances). We have received arguments from CorVel. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge this request for information was ruled upon in Open Records Letter No. 2010-04080 (2010). In that ruling we determined the department must continue to rely on Open Records Letter Nos. 2007-02239 (2007), 2007-04108 (2007), 2007-09485 (2007), and 2009-00924 (2009) as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. We also ruled the department must withhold some information under section 552.101 of the Government Code in conjunction with sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code, section 552.110 of the Government Code, section 552.136 of the Government Code, and section 552.137 of the Government Code. You now submit additional documents,

including CorVel's business plans and financial statement, for our review and assert a new confidentiality provision for CorVel's credentialing files. You acknowledge 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 with respect to the newly raised provision and submitted information. See Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See *id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third-party interests are at stake and you raise a confidentiality provision, we will address your arguments under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code for the submitted credentialing files and CorVel's arguments against the disclosure of the newly submitted business plans. However, you must continue to follow Open Records Letter No. 2010-04080 with respect to the remaining requested information.

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. Section 552.101 encompasses information protected by other statutes. The department and CorVel raise section 552.101 in conjunction with section 160.007 of the Occupations Code for the submitted credentialing files. Section 160.007 provides in pertinent part:

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

...

(c) A record or proceeding of a medical peer review committee or a written or oral communication made to the committee may be disclosed to:

...

(2) an appropriate state or federal agency[.]

Occ. Code § 160.007(a), (c). "Medical peer review" is defined by the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code, as "the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners." *Id.* § 151:002(a)(7). A medical peer review committee is "a committee of a

health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians[.]” *Id.* § 151.002(a)(8). The definition of a health care entity under the MPA includes “an entity, including a health maintenance organization . . . that provides or pays for medical care or health care services and follows a formal peer review process to further quality medical care or health care[.]” *Id.* § 151.002(a)(5)(B).

The department and CorVel state that a portion of the submitted documents consist of the credentialing files of CorVel, a workers’ compensation health care network that provides or pays for medical care or health care services. The department informs us that, pursuant to section 1305.303 of the Insurance Code, a workers’ compensation health care network (a “network”) is required to have a quality improvement program, which must include a peer review action procedure for providers as described by section 151.002 of the MPA. *See* Ins. Code § 1305.303(a), (i); *see also id.* § 1305.004(a)(16) (defining “workers’ compensation health care network”). We note that chapter 1305 of the Insurance Code defines credentialing as “the review . . . of qualifications and other relevant information relating to a health care provider who seeks a contract with the network.” *Id.* § 1305.004(a)(6); *see also* 28 T.A.C. § 10.2(6). Section 10.82 of title 28 of the Texas Administrative Code details the department’s rules with respect to the credentialing of network doctors and health care practitioners by a network’s credentialing committee. *See* 28 T.A.C. § 10.82. Section 10.82(c) of title 28 of the Texas Administrative Code provides “the quality improvement program shall provide for a peer review procedure for doctors, as required under the [MPA] . . . [and] the network shall designate a credentialing committee that uses a peer review process to make recommendations regarding credentialing decisions.” *See id.* § 10.82(c). CorVel informs us that the submitted credentialing files are records of their network’s credentialing committee which was designated pursuant to section 10.82(c) to use the medical peer review processes set forth in the MPA to make recommendations regarding credentialing decisions of network doctors and health care practitioners. The department states the submitted credentialing files were provided to the department in accordance with section 160.007(c) of the Occupations Code. *See* Occ. Code § 160.007(c) (providing for the disclosure of confidential medical peer review committee records to an appropriate state agency). Based on the representations of the department and CorVel and our review, we agree that the submitted credentialing files are confidential records of a medical peer review committee under section 160.007 of the Occupations Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup> *See St. Luke’s Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 5 (Tex. 1996) (finding that review by medical staff committee of application for staff privileges qualifies as medical peer review because it necessarily involves review of physician’s qualifications, competence, and ethics).

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against the disclosure of the submitted credentialing files.

Next, CorVel claims that the submitted business plans and attached financial projections are excepted under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. 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 . . . . 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 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.<sup>2</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). 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. *See* Open Records Decision No. 402 (1983).

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<sup>2</sup>The 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).

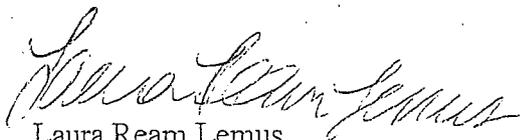
CorVel claims that the submitted business plans and attached financial projections constitute trade secrets and are excepted under section 552.110(a). Having considered CorVel's arguments, we find that it has established a *prima facie* case that its business plan information, including the attached financial projections, which we have marked, constitutes trade secrets. Therefore, the department must withhold the information we have marked pursuant to section 552.110(a) of the Government Code.

In summary, except for the credentialing files, business plans, and financial statement, the department must continue to follow our ruling in Open Records Letter No. 2010-04080. As to the requested credentialing files, the department must withhold them under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code. The department must withhold the business plans and attached financial projections, which we have marked, under section 552.110(a) of the Government Code. As no further exceptions are raised, the department must release the submitted financial statement.

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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 386576

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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