



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

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

OR2010-13092

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# 391901 (TDI# 105308).

The Texas Department of Insurance (the "department") received a request for specified comments regarding premium surcharges for Class 2 Public Securities. You state you will release some of the responsive information to the requestor. Although the department takes no position on whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of interested third parties.¹ Accordingly, you state, and provide documentation showing, you have notified these interested third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory

¹The interested third parties are: Farmers Insurance Company ("Farmers"); U.S. Risk Insurance Group, Inc.; Texas Surplus Lines Association; Goldman, Sachs & Co.; American Insurance Association; Stonington Insurance Company; Insurance Counsel of Texas; Brotherhood Mutual Insurance Company ("Brotherhood"); and Texas Farm Bureau Insurance Companies ("Texas Farm").

²You inform us you are withdrawing your request for a ruling on information pertaining to Farmers. You state Farmers notified the department it does not object to the release of its information. Accordingly, this ruling does not address the information relating to Farmers.

predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Brotherhood and Texas Farm. We have considered the submitted arguments and reviewed the submitted information.

We note 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Brotherhood and Texas Farm. Thus, the remaining third parties have not demonstrated they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, the department may not withhold any of the submitted information based on the proprietary interests of the remaining third parties.

Next, we note that two of the e-mails Brotherhood seeks to withhold were not submitted by the department to this office for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). However, we will address the arguments against the disclosure of the information submitted by the department.

Brotherhood claims its submitted e-mail is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial 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[.]" *Id.* § 552.110(b). This exception to disclosure 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. *Id.* § 552.110(b); *see also* ORD 661.

Upon review, we find Brotherhood has failed to provide specific factual evidence demonstrating release of any of its information would result in substantial competitive harm to the company. *See* ORD 661 (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). Therefore, the department may not withhold any of the information at issue under section 552.110(b) of the Government Code.

Texas Farm claims a portion of its submitted information is excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 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 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 addresses listed in the Texas Farm's information, as well as the remaining information, are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their release.³ *See id.* § 552.137(b). As no further exceptions to disclosure have been raised, the remaining 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 precedent determination regarding any other information or any other circumstance.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 391901

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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