



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2011

Ms. Sara Shipler Waitt
Senior Associate Commissioner
Legal and Regulatory Affairs
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-05429

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# 414951 (TDI ORR# 112461).

The Texas Department of Insurance (the "department") received a request for three specified "Auto Personal Lines filings" for MileMeter Insurance Company ("MileMeter"). You state some of the responsive information will be released with certain e-mail addresses withheld under section 552.137 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of MileMeter. Thus, pursuant to section 552.305 of the Government Code, you notified MileMeter of the request and of the company's right to submit arguments to this office as to why its information should not be released. *See* 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 in certain circumstances). You have submitted comments from an attorney representing

¹The previous determination issued in Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code.

MileMeter. We have considered the submitted comments and reviewed the submitted information.

MileMeter claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, MileMeter does not cite to any specific law, and we are not aware of any, that makes the submitted information confidential under section 552.101. *See id.* Therefore, the department may not withhold any portion of MileMeter's information under section 552.101 of the Government Code.

MileMeter also claims the submitted information is excepted from disclosure as a trade secret under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person that are privileged or confidential by statute or judicial decision. *See 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 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 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.² Open Records Decision No. 402 (1983).

In this instance, MileMeter has only stated that its information is a trade secret under section 552.110(a). It has not submitted any arguments explaining how this information meets the definition of a trade secret or how the trade secret factors apply to this information. See Open Records Decision Nos. 552 at 5 (party must establish *prima facie* case that information is trade secret), 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 319 at 3 (1982) (information relating to pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110(a)). Furthermore, MileMeter has published some of the submitted information on its website, including what vehicles are covered by a policy, the term of a policy, and policy cancellation and expiration. Accordingly, we find that MileMeter has failed to demonstrate the submitted information is a trade secret under section 552.110(a) of the Government Code.

The submitted information includes an e-mail address of a member of the public. Section 552.137 of the Government Code 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 email address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address is not specifically excluded by section 552.137(c). As such, the e-mail address, which we marked, must be withheld under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. See *id.* § 552.137(b). 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 previous determination regarding any other information or any other circumstances.

²The 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 (1939); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 414951

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/ enclosures)