



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2011

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

OR2011-11359

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# 426430 (TDI # 116072).

The Texas Department of Insurance (the "department") received a request for the underwriting guidelines of four specified insurance programs. You state you will redact certain information as permitted by Open Records Decision No. 684 (2009).<sup>1</sup> Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state its release may implicate the proprietary interests of a third party. Accordingly, you provide documentation showing you notified Home State County Mutual Insurance Company ("Home State") of the request and 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); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received

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<sup>1</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, a copy of a Texas driver's license, and Texas license plate numbers under section 552.130 of the Government Code, credit card numbers, debit card numbers, insurance policy numbers, bank routing numbers, and bank account numbers under section 552.136 of the Government Code, and 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.

comments from an attorney for Home State. We have considered the submitted arguments and reviewed the submitted information.

Home State raises section 552.110 of the Government Code for its information. 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 a "trade secret" from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Record Decision No. 552 (1990). Section 757 defines 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 Huffines*, 314 S.W.2d at 776. 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* ORD 552 at 5. 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.<sup>2</sup> Open Records Decision No. 402 (1983).

Home State contends its underwriting guidelines qualify as trade secret information under section 552.110(a). Upon review, we find Home State has made a *prima facie* case that its underwriting guidelines constitute trade secrets for purposes of section 552.110(a). We have received no arguments that rebut Home State's claim as a matter of law. Accordingly, the

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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 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).

department must withhold the submitted information under section 552.110(a) of the Government Code.<sup>3</sup>

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/tf

Ref: ID # 426430

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)

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<sup>3</sup>Because our ruling is dispositive, we do not address Home State's remaining argument against disclosure.