



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2013

Mr. Stanton Strickland
Associate Commissioner
Legal Section, General Counsel Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1A
Austin, Texas 78714-9104

OR2013-17425

Dear Mr. Strickland:

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# 501398 (TDI# 141120).

The Texas Department of Insurance (the "department") received a request for the articles of incorporation and bylaws of MileMeter Insurance Company ("MileMeter"). 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 MileMeter. We have considered the submitted comments and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the requested articles of incorporation or bylaws. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

MileMeter claims the responsive information is excepted from disclosure under section 552.101 of the Government Code. *See* Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). However, MileMeter does not cite to any specific law, and we are not aware of any, that makes the responsive 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 claims its information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). However, section 552.102 applies to only information in the personnel file of a governmental employee. *See id.* None of MileMeter's information consists of information in the personnel file of a governmental employee. Therefore, we find section 552.102 of the Government Code is not applicable and the department may not withhold any of MileMeter's information on that basis.

MileMeter also raises section 552.104 of the Government Code as an exception to disclosure for its information. This section excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the department does not seek to withhold any information pursuant to section 552.104, no portion of MileMeter's information may be withheld on this basis.

MileMeter contends the responsive 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* 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, 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.¹ *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 the responsive 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). Accordingly, we find that MileMeter has failed to demonstrate the responsive information is a trade secret under section 552.110(a) of the Government Code. Thus, the department may not withhold any of MileMeter's information on the basis of section 552.110(a).

MileMeter claims its information is confidential pursuant to section 552.117 of the Government Code. Section 552.117 is designed to protect the personal information of the employees of governmental bodies from disclosure. *See Gov't Code § 552.117*. None of MileMeter's information consists of the personal information of an employee of a

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

governmental body. Therefore, none of MileMeter's information may be withheld on the basis of section 552.117.

MileMeter asserts some of its information is excepted from disclosure under section 552.143 of the Government Code, which provides in relevant part:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

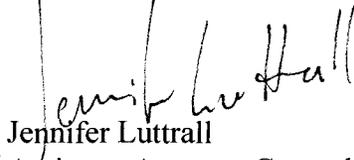
Id. § 552.143 (a)-(c). Section 552.143 makes confidential certain investment fund information pertaining to governmental bodies. MileMeter has not explained, nor can we discern, how section 552.143 is applicable to any of the responsive information. Accordingly, the department may not withhold any of the responsive information under section 552.143(c) of the Government Code.

Finally, MileMeter asserts some of its information is subject to section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we find none of the responsive information consists of a social security number. Accordingly, none of the responsive information may be withheld on the basis of 552.147 of the Government Code. As no further exceptions to disclosure have been raised, the responsive 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/bhf

Ref: ID# 501398

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Christopher Gay
President
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(w/o enclosures)