



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2014

Mr. Stanton Strickland
Associate Commissioner
Legal Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2014-10074

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# 526321 (TDI# 149397).

The Texas Department of Insurance (the "department") received a request for the personal automobile filings of five named companies, excluding the e-mail addresses of individuals at companies who have not consented to the release of their e-mail addresses. You state you have released some of the requested information. You state, although the department takes no position with respect to the remaining requested information, its release may implicate the interests of Alinsco Insurance Company ("Alinsco"). Accordingly, you state, and provide documentation demonstrating, the city notified Alinsco of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by Alinsco.

Initially, you state the department will redact e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ 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). Gov’t Code § 552.137(a)-(c). However, we note the requestor specifically excluded from his request for information the e-mail addresses of individuals at companies who have not consented to the release of their e-mail addresses. Therefore, to the extent the individuals did not consent to the release of their e-mail addresses, those e-mail addresses are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request. Conversely, to the extent the e-mail addresses at issue are responsive because the individuals at issue did consent to the release of their e-mail addresses, these e-mail addresses may not be withheld pursuant to section 552.137. *See id.* § 552.137(b).

Alinsco submits arguments against disclosure of its information under section 552.110 of the Government Code. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one’s business, and which gives [one] 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts,

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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) (citation omitted); *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.² *See* RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. 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. Open Records Decision No. 402 (1983).

Alinsco generally asserts its policy language, forms, and computer technology system information constitutes trade secrets. Upon review, we find Alinsco has failed to demonstrate its information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the department may not withhold the information at issue on the basis of section 552.110(a) of the Government Code. As no further exceptions have been raised, the department must release the responsive information.

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

²There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; and
- (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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 526321

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Paul B. Harrison
President
Alinsco Insurance Company
6032 Lake Worth Boulevard, Suite 100
Fort Worth, Texas 76135
(w/o enclosures)