



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2015

Mr. Bob Davis
Office of Agency Counsel
Legal Section MC 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-21817

Dear Mr. Davis:

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# 583531 (TDI #164158).

The Texas Department of Insurance (the "department") received a request for information pertaining to credit scoring models. You state you will release some information to the requestor. You state you will redact information pursuant to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of State Farm County Mutual Insurance Company ("State Farm"). Accordingly, you state, and provide documentation showing, you notified State Farm of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990)

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

(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 comments from State Farm. We have reviewed the submitted information and the submitted arguments.²

State Farm states some of its information consists of information, the release of which would give advantage to competitors. Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. State Farm states its underwriting guidelines contain commercial and financial information which, if disclosed, would cause substantial competitive harm to State Farm. In addition, State Farm states its guidelines provide a blueprint of State Farm’s customer risk analysis and selection process, and their disclosure would give competing insurers, without expenditure of time or money, the benefit of State Farm’s considerable experience and expertise in making fundamental business operation decisions on matters essential to its competitive success. After review of the information at issue and consideration of the arguments, we find State Farm has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information at issue under section 552.104(a) of the Government Code.³ The department must release the remaining 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

²The department acknowledges it did not comply with section 552.301 of the Government Code when it requested a ruling from this office. See Gov’t Code § 552.301(b). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider any arguments submitted by the third party for the submitted information. See *id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

³As our ruling is dispositive, we need not address State Farm’s remaining arguments against disclosure of this information.

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

Sincerely,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 583531

Enc. Submitted documents

c: Requestor
(w/o enclosures)

State Farm
c/o Ms. Mary F. Keller
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(w/o enclosures)