



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

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

OR2015-25405

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# 589575.

The Texas Department of Insurance (the "department") received a request for the homeowners and automobile underwriting guidelines for Travelers Home and Marine Insurance Company ("Travelers"), Consumers County Mutual Insurance Company ("Consumers"), State Farm Lloyds, State Farm County Mutual Insurance Company of Texas, State Farm Mutual Automobile Insurance Company (collectively "State Farm"), Safeco Insurance Company of Indiana, Safeco General Agency (collectively "Safeco"), Metropolitan Lloyds Insurance Company of Texas ("Metropolitan"), ASI Lloyds ("ASI"), Progressive County Mutual ("Progressive"). Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Travelers, Consumers, State Farm, Safeco, Metropolitan, ASI, and Progressive. Accordingly, you state you notified the parties of the request for information and of their rights 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) (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 and Progressive. We have reviewed the submitted information and considered the submitted arguments

We note some of the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-16749 (2015). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2015-16749 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not subject to the previous ruling, we will consider your arguments for the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Travelers, Consumers, Safeco, Metropolitan, or ASI explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest Travelers, Consumers, Safeco, Metropolitan, or ASI may have in the information.

Section 552.104(a) of the Government Code exempts 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, 841 (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.* State Farm states it has competitors in the business of homeowner insurance, including the requestor. In addition, State Farm states its homeowner and automobile insurance underwriting guidelines "comprise a precise, detailed compilation" of experience and expertise that would be of considerable value to its competitors in the insurance business. State Farm argues release of its information would allow its competitors to "learn of key State Farm business decisions on risk acceptance, and to identify with precision State Farm's customer base." Additionally, Progressive asserts release of its information "would give advantage to a competitor or bidder[.]" including the requestor. Progressive states release of its information would "enable [Progressive's] competitors to utilize this information without the time and expense" spent by Progressive and "could help a competitor in developing a strategic plan of attack in Texas" to "twist away policyholders of [Progressive]." After review of the information at issue and consideration of the

arguments, we find State Farm and Progressive have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code.¹

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 e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked are not of the type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must continue to rely on Open Records Letter No. 2015-16749 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. The department may withhold the information we have marked under section 552.104(a) of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The remaining information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

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

¹As our ruling is dispositive, we need not address State Farm’s or Progressive’s remaining arguments against disclosure.

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

Sincerely,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 589575

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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