



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 21, 2020

Ms. Mary Dougherty  
Open Records Attorney  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714

OR2020-18130

Dear Ms. Dougherty:

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# 836659 (TDI #R008144).

The Texas Department of Insurance (the "department") received a request for two categories of information pertaining to a specified address. Although the department takes no position as to whether the submitted information is excepted from disclosure under the Act, the department states release of the submitted information may implicate the proprietary interests of Insurance Services Office, Inc. ("ISO"). Accordingly, the department states, and provides documentation showing, it notified ISO 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) (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 ISO. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address ISO's contention that the submitted e-mail communication containing the requested information is not responsive because it was created by the department after the date of the request. We note the Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, the department created the

e-mail from information maintained by the department at the time the request was received. *See* Gov't Code § 552.302. Thus, we find the department has made a good-faith effort to relate the request to information it holds, and we will address the applicability of ISO's arguments to the information at issue.

Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(c). ISO argues the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find ISO has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we marked under section 552.110(c) of the Government Code.<sup>1</sup> 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/mo

Ref: ID# 836659

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.