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ATTORNEY GENERAL OF TEXAS

April 4, 2022

Mr. James Kelly  
Open Records Attorney  
Texas Department of Insurance  
MC GC-ORO  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2022-09775

Dear Mr. Kelly:

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# 940432 (TDI# R014404).

The Texas Department of Insurance (the "department") received a request for statistical reports filed by Brazos Valley Title Company, LLC ("BVTC") during a specified time period.<sup>1</sup> The department states it has released some information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of BVTC. Accordingly, the department states, and provides documentation showing, it notified BVTC of the request for information and of its right to submit arguments to this office as to why the submitted information 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 BVTC. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from the

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<sup>1</sup> The department states, and provides documentation showing, it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

requestor's representative (the "requestor"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we will address the requestor's concerns. The requestor informs us, and provides documentation showing, the department previously released BVTC's 2018 statistical report to the requestor. We understand the requestor to assert that by releasing BVTC's 2018 statistical report, the department has set a legal precedent for releasing the information that is subject to the current request, which consists of BVTC's 2019 and 2020 statistical reports. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989). In this instance, however, the previously released 2018 statistical report is not the same document as the 2019 or 2020 statistical report. Moreover, we have no indication the information currently at issue has been released to any other member of the public. The fact the department has released one of BVTC's statistical reports does not mean that it is legally required to release all of BVTC's statistical reports, even if that information is substantially similar to the information that has been previously released. Furthermore, the department has not taken any position regarding the public availability of the requested information, but rather determined that BVTC's interests may be implicated. When a third-party's proprietary interests are at issue, section 552.305(d) of the Government Code requires a governmental body to notify that third party of its right to submit comments to this office explaining why its information should be withheld from disclosure. *See* Gov't Code § 552.305(d). Because BVTC claims the reports at issue include proprietary information, we will consider BVTC's arguments against disclosure of the submitted information.

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). BVTC argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find BVTC has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(c) of the Government Code.<sup>2</sup> However, we find BVTC has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the department may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). BVTC argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find BVTC has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the department may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.110(c) of the Government Code. 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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jm

Ref: ID# 940432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)