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ATTORNEY GENERAL OF TEXAS

December 7, 2022

Ms. Mary Dougherty  
Open Records Attorney  
Texas Department of Insurance  
P.O. Box 12030  
Austin, Texas 78711

OR2022-37956

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# 988307 (TDI# R016741).

The Texas Department of Insurance (the "department") received a request for information pertaining to specified companies and specified communications. You state you have released some information. The department states it will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> 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 Nationwide Mutual Insurance Company ("Nationwide"). Accordingly, the department states, and provides documentation showing, it notified Nationwide of the request for information and of the 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 Nationwide. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain 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.

Initially, we note Nationwide claims the submitted information is not responsive to the instant request. This decision does not address the public availability of any non-responsive information and that information need not be released. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find all of the submitted documents are responsive to the request. We will therefore address Nationwide's claimed exception to disclosure of the submitted information.

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 a trade secret." *See* Gov't Code § 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). 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).

Nationwide argues the submitted information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Nationwide 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. However, we find Nationwide has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or 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(b) or section 552.110(c) of the Government Code. As no further exceptions to disclosure are raised, 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,

Colin Henry  
Assistant Attorney General  
Open Records Division

CEH/pt

Ref: ID# 988307

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)