



April 22, 2026

Via Email

[REDACTED]

Re: Records request to Colorado County for proprietary records

Dear Mr. [REDACTED];

Previously on March 9th, you made a Public Information Request to Colorado County for records of the Texas Association of Counties Risk Management Pool. ("Pool").

The purpose of this letter is to provide you with a response to your request. The Public Information Act ("PIA") requires that certain information remain confidential. In circumstances where such exclusions may apply, the governmental entity is required to submit the documents to the Texas Attorney General for a confidentiality determination. When as here that is the case, the documents are withheld pursuant to those exceptions and are submitted to the Texas Attorney General for a decision on whether the PIA requires that these documents be withheld or not. This process is not to interfere with governmental transparency but to protect confidential information that may not be disclosed without approval from the Attorney General and to ensure that the PIA is not abused.

Attached is a copy of the Pool's letter to the Attorney General outlining the matters we believe to be privileged, confidential or precluded from production by other law. That letter/ brief explains our concern with producing the documents that are provided to the Attorney General.

Sincerely,

/s/Mike Thompson, Jr.

Mike Thompson, Jr.
Associate General Counsel
Texas Association of Counties

Enclosures



April 22, 2026

Via electronic submission

Honorable Ken Paxton
Attorney General State of Texas
Open Records Section
P. O. Box 12548
Austin, Texas 78711-2548

Attention Open Records Division; Requestor: [REDACTED]; Government Body: Colorado County and Third -Party Texas Association of Counties Risk Management Pool

Re: Third Party Texas Association of Counties Risk Management Pool (Pool) request for Ruling on Open Records Request to Colorado County from [REDACTED] regarding proprietary interests, trade secrets and loss of competitive advantage of the Pool.

Dear General Paxton,

The Texas Association of Counties Risk Management Pool ("Pool") received a Third-Party Notice related to the above referenced open records request on April the 7th. (Ex. A). The original request was made to Colorado County on or about March 9th ("County"). (Ex. B). This response is therefore timely because it is submitted within 10 business days of that notice as required by the Government Code. Here the Pool responds to the request and urges objections pursuant to the Code. We also adopt any arguments urged by the county in its brief to your office. Also, please kindly allow this letter to serve as both a Request for an Opinion and as our comments via brief pursuant to § 552.301 (b) and (e).

A) Background/Overview

[REDACTED] ("Requestor") recently submitted a public information request to the County for records related to operations of the Pool. (Ex. B) The County then notified the Pool. (Ex. A). The Pool files this letter to urge exceptions to the request under the Act.

The Pool respectfully claims exceptions to disclosure under the Public Information Act pursuant to *Tex. Gov't Code* §§ 552.101 and 552.104(a), or in the alternative under *Tex. Gov't Code* §§ 552.110, and 552.1101. Disclosure of the requested Trade Secrets, commercial, proprietary, confidential and financial information contained in the document sought by this request would cause substantial competitive

harm to its business operations. We understand that copies of the proprietary information are being provided by the County.

The Texas Association of Counties Risk Management Pool (Pool) is a governmental body within the meaning of statute. Including but not limited to Tex. Gov't Code section 791.001 et. seq. Tex. Local Gov't Code Section 119.008, Tex. Gov't Code section 2259.037.

B) Information is excepted from disclosure under §§ 552.101 and 552.104(a).

The Government Code specifically excepts from disclosure information like this that, if released, could provide an advantage to a competitor or bidder. *Tex. Gov't Code* § 552.104(a). In interpreting the earlier version of this section, the Texas Supreme Court found a third party, such as the Pool, may invoke this exception to disclosure. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). There is no principled reason to interpret the new version of the section differently. Thus, the test of disclosure under § 552.104 remains “whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. In fact, this has been the interpretation followed by the Open Records Division recently. *See OR 2020-00950*.

This exception should not be limited to contemporaneous, ongoing competitive bidding situations either because the County can be expected to accept bids for its coverage again in the future. According to *Boeing Co.*, the Pool only needs to show that the release of its competitively sensitive information would give an advantage to a competitor, even in a situation like this where a contract has already been issued. *Id.* at 832.

Please note that the Pool has numerous competitors in the business of providing liability coverage for counties, county employees, and county officials. The coverage outlined in these documents requested is subject to renewals and later competition for those renewals. Disclosure of the information in the requested documents would provide competitors with specific confidential information that could be used against the Pool. The information would be of benefit to a competitor and impact the Pool’s competitive bidding to the county.

In making this response the Pool incorporates all arguments and factual assertions outlined anywhere in this Response. The Pool urges that the responsive documents here attached in their entirety as Exhibit B should be exempt from disclosure under § 552.104(a) because if disclosed, the information would give an advantage to “a competitor or bidder”.

As previously noted, the key question is only “whether knowing another bidder [or competitor’s information] would be an advantage.” The unique contents of these documents, how the Pool presents and talks about its services, pricing models, history, references, and even other “extra” services being offered in the proposed coverages all are proprietary information that the Pool has developed to improve its product and services. The disclosure of this unique information allows competitors to tailor their future bids to attack perceived weaknesses in the pricing and coverage of the Pool to learn of weakness in their own product and pricing. After the holding in *Boeing*, the only question appears to be whether disclosing the information here attached would give advantage to a competitor. *See e.g. Tex. Atty. Gen. Op. ORD 2019-10032*.

While the Pool believes that under *Boeing* production of these documents potentially gives a competitor

an advantage and should not be subject to disclosure in their entirety, the Pool also understands that there may be some dispute about whether it must be specific in its objections. Furthermore, even where it has been determined that the attached responsive documents are not entirely excepted from disclosure, specific information therein could be. *Tex. Atty. Gen. Op. ORD 1990-541*. As such, the Pool seeks to protect specific information within Exhibit C pursuant to § 552.104 (a) as follows:

Any and all references to pricing and pricing information (collectively “pricing information”). This information is unique to the Pool and would give a direct advantage to a competitor in future projects with the County or any other customer buying the same or similar products. The pricing information is not public knowledge, not generally published to the world, and is kept secret from nearly all of the Pool’s own employees. Substantial time, analysis, and information goes into the creation of these pricing figures and terms, the release of this pricing information would allow competitors to outline and attack perceived weaknesses in the same and use knowledge of these contribution amounts to undercut the Pool with current customers and/or potential future customers. The Pool constantly participates in efforts to remain competitive in pricing as well as adding and changing coverages. The release of such competitively sensitive information would allow potential competitors to have the benefit of this confidential and proprietary information. This information has been highlighted in the attached documents.

The Pool also believes that the specific information outlined above should be exempted from disclosure under § 552.101 or § 552.104. However, even in the very unlikely event that this review overrules *OR 2020-08902*, *OR 2020-11426* and other Opinion Letters and now finding said sections not applicable to some or all the outlined information, the information would still be exempt from disclosure under *Tex. Gov’t Code § 552.110* and § 552.1101 as discussed below.

C) Information is excepted from disclosure under § 552.110.

Tex. Gov’t Code § 552.110 protects from disclosure (1) trade secrets, and (2) commercial financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information is obtained. *Tex. Gov’t Code § 552.110(b), (c)*. Section 552.110(b) protects trade secrets if there is specific factual evidence that the information is a trade secret. The new section became effective January 1, 2020, and provides a definition of a “trade secret” in § 552.110(a). The documents at issue here fall squarely into this definition as they include programs, methods, techniques, processes, procedures and/or financial data. Indeed, it is self-evident that types, limits, and costs of coverage are financial data. All this information would be of benefit to a competitor. It would appear that the common law protecting trade secrets and proprietary information developed at cost to the owner who developed the intellectual property must be able to assert such exceptions as “or other law” long recognized under the Act. Otherwise, prudent vendors may hesitate to bid to provide goods or services fearing predatory actions by competitors under the Public Information Act.

The open records division has also previously considered the voice of the common law in evaluating what a trade secret is. From that we know that the Texas Supreme Court has adopted the definition of trade secret from § 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *Tex. Atty. Gen. Op. ORD 552*. § 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business... in that it is not simply information as to a single or ephemeral events in the conduct of the business.... A trade secret is a process or device for continuous use in the operation of a business... [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Restatement of Torts § 757 cmt. B. (1939); see also *Huffines*, 314 S.W.2d at 776.

In determining the existence of a trade secret, the courts also look to the list of six factors outlined in the restatement:

- (1) the extent to which the information is known outside of the company;
- (2) the extent to which it is known by employees and others involved in the company;
- (3) the extent of measures taken by the company to guard the secrecy of the information;
- (4) the value of the information to the company and its competitors;
- (5) the amount of effort or money expended by the company in developing the information;
- (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757 cmt. b. (1939); ORD Nos. 319 (1982), 306 (1982), and 255 (1980).

The party claiming a trade secret is not required to satisfy all six factors because trade secrets do not fit neatly into each factor every time. *Waste Management of Texas, Inc. v. Abbott*, 406 S.W.3d 626, 631 (Tex. App.—Eastland 2013 pet. den'd); *In re Bass*, 113 S.W.3d 735, 740 (Tex. 2003). In addition, other factors that are not included in the six factors of the *Restatement* may be relevant to the trade secret analysis. *Id.* Some of that specific authority is listed below to help pour content into the meaning of the term.

In one trade secret misappropriations case for example, the Eastland Court of Appeals confirmed that a company's customer lists, pricing information, client information, and marketing strategies are trade secrets. *Waste Mgmt. of Tex., Inc. v. Abbott*, 406 S.W.3d 626, 631 (Tex. App.—Eastland 2013, pet. den'd). In another, the Dallas Court of Appeals determined that there was sufficient evidence establishing that written forms developed to facilitate the intake of indigent health care claims and coordination of that information with patients and providers were trade secrets. *Gonzales v. Zamora*, 791 S.W.2d 258, 266 (Tex. App.—Dallas 1990, no writ). In still another, *Gallagher Healthcare Insurance Services v. Vogelsang*, 312 S.W.3d 640 (Tex. App.—Houston [1st. District] 2009, pet. den'd) the Houston court determined that

financial information including; client specific insurance information, income, strategic prospecting and niche strategies were all confidential information worthy of protection in a trade secrets theft case. *Id.* at *650-651.

And the 5th Circuit found in a trade secrets theft case that, “terms of existing contracts with customers, including renewal dates, premium information, loss information, credit issues and reinsurance rates” were trade secrets. *Guy Carpenter & Company Inc. v. Provenzale* 334 F. 3d 459, 468-469 fn 4 (5th Cir. 2003). Furthermore, a company’s confidential pricing and rate information may qualify as a trade secret. *Waste Management*, 406 S.W.3d at 631; *In re Union Pac. R.R. Co.*, 294 S.W.3d, 589, 591–592 (Tex. 2009).

These authorities and others establish that properly understood, the information requested are trade secrets, and proprietary work product worthy of protection. They should be excepted as a whole from disclosure. In the alternative, the confidential financial information in **Exhibit C** should be redacted from release as discussed in this brief.

D) Information is also excepted from disclosure under § 552.1101.

The Pool also urges that the attached documents are excepted from disclosure by *Tex. Gov’t Code § 552.1101*. As noted above, the information identifies the Pool’s individual approach to pricing methodology, pricing information that will be used in future solicitation or bid documents, underwriting formularies and organizational structure. This information provides specifics of offered services, the costs of offered services, and the matrix of administration, and services central to the operation of the Pool. It would be of benefit to competitors as they evaluate coverage changes, additional coverages, and costs for their own future bids. So important is the information that the Pool is now specifically requesting it be excluded from disclosure under the Act and has done so in the past.

Thank you for your time and attention to this matter and please feel free to contact me with any questions or concerns you may have. In addition, pursuant to the Code, the requestor is being provided with a copy of this correspondence without the enclosures.

Sincerely,

/s/Mike Thompson, Jr.

Mike Thompson, Jr.
Associate General Counsel
Texas Association of Counties

Enclosures

Cc:
Colorado County
Via Eric Magee, Counsel
e.magee@allison-bass.com

[REDACTED], Requestor

Via Email [REDACTED]