



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 27, 1997

Ms. Christine T. Rodriguez  
Staff Attorney  
Legal and Compliance  
MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR97-1224

Dear Ms. Rodriguez:

You ask this office to reconsider our decision in Open Records Letter No. 97-0301 (1997). Your request for reconsideration was assigned ID# 105890.

In Open Records Letter No. 97-0301 (1997), we concluded that the requested premium and cancellation information concerning certain companies, including Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Insurance Company ("GEICO"), and Progressive County Mutual Insurance Company ("Progressive"), who had not submitted responses to this office as to why the requested information should not be released under section 552.110 of the Government Code, must be disclosed to the requestor. This office also determined that some of the responding companies, including The Ohio Casualty Group of Companies ("Ohio Casualty"), failed to demonstrate that their companies' premium and cancellation information was protected from disclosure under section 552.110.

GEICO and Progressive each claim that they did not receive notice from this office that their property and privacy rights may be implicated by the release of the

information at issue through internal miscommunication.<sup>1</sup> Both companies have now submitted written comments to this office demonstrating that their information should be withheld under section 552.110. Ohio Casualty initially responded to the notice from this office by claiming that its information is protected by section 552.110. Ohio Casualty has submitted additional arguments making a prima facie demonstration that its information should be protected as a trade secret under section 552.110 of the Government Code.

We now affirm our previous ruling, except as to GEICO, Progressive, and Ohio Casualty,<sup>2</sup> to the extent that this office determined in Open Records Letter No. 97-0301 (1997) that the Texas Department of Insurance (the "department") must disclose the requested premium and cancellation information as to those particular companies which either did not submit responses to this office or did not make a prima facie demonstration that their information was protected as a trade secret or as commercial or financial information under section 552.110 of the Government Code.

However, we now overrule Open Records Letter No. 97-0301 (1997) to the extent that this office determined that the department must withhold the requested premium and cancellation information concerning those insurance companies that made a prima facie demonstration that their information was protected as a trade secret or as commercial or financial information under section 552.110 of the Government Code.

The requestor has raised relevant disputed factual and legal issues, including whether the premium and cancellation information at issue has been publicly revealed. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision No. 609 (1992). We, therefore, defer ruling on the issues concerning the secrecy or confidentiality of the premium and cancellation information at issue. We refer these questions back to the department to make findings on the issues raised. If the department makes findings that the information at issue constitutes a trade secret or commercial or financial information, it must be withheld. If the department determines that this information does not constitute a trade secret or commercial or financial information, it must be released. In addition, we note the existence of other appropriate avenues for resolving these factual and legal disputes. *See, e.g.*, sections 552.321, 552.324, and 552.325 of the Government Code.

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<sup>1</sup>See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released; Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

<sup>2</sup>We now find that GEICO, Progressive, and Ohio Casualty have each made a prima facie demonstration that their information should be protected by section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 105890

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All third party insurance companies

