



March 13, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal Compliance, MC110-1A
Texas Department of Insurance
P.O. box 149104
Austin, Texas 78714-9104

OR2000-1767

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134936.

The Texas Department of Insurance (the "department") received a request for a copy of American Bankers' training program for credit life. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code and that section 552.305 is implicated because proprietary interests are at issue. We have considered the exception you claim and reviewed the submitted information.

Section 552.305 relieves the governmental body of its duty under section 552.301(b) to state which exceptions apply to the information and why they apply only in circumstances where (1) a third party's privacy or property interests may be implicated, (2) the governmental body has requested a ruling from the attorney general, and (3) the third party or any other party has submitted reasons for withholding or releasing the information. Open Records Decision No. 542 at 3 (1990).

You state that some of the submitted information may involve a proprietary or property interest of American Bankers. You demonstrate that you have notified American Bankers of this request as required under section 552.305(d) of the Government Code. However, as of this date, American Bankers has not submitted arguments for withholding or releasing the information as required under section 552.305(D)(2)(b). Therefore, we have no basis to conclude that the responsive information is excepted from disclosure. *See Gov't Code* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, the department may not withhold the requested information under section under section 552.101 of the Government Code.

Next, you assert that American Bankers' training materials contain underwriting guidelines which are excepted from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 38.002 of the Texas Insurance Code provides, in relevant part, that

(a) The department ... may obtain a copy of an insurer's underwriting guidelines.

(b) Underwriting guidelines are confidential and the department ... may not make the guidelines available to the public.

(c) The department ... may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

...

(f) A violation of this section is a violation of Chapter 552, Government Code.

Ins. Code § 38.002(a), (b), (c), (f). Although section 38.002(c) permits the disclosure of the guidelines, provided the release does not directly or indirectly identify the insurer, we conclude that in this instance, as the requestor is specifically identifying American Bankers, the release of the guidelines is impermissible. Consequently, the department must redact the underwriting guidelines that appear in the submitted documents prior to the documents' release pursuant to section 552.101 of the Government Code in conjunction with section 38.002(b) of the Insurance code. After our review of the documents, we agree with most of the markings you have made identifying the underwriting guidelines that appear in the submitted documents. However, we have marked the information that we conclude is not part of the underwriting guidelines. *See* Open Records Decision No. 653 (1997) (citing Attorney General's Letter Opinion No. 94-061 at 2 n.1 (1994) concerning the definition of "underwriting guidelines"). You must release this marked information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

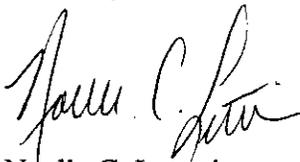
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 134936

Encl. Submitted documents

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