



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 24, 2003

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal & Compliance Division, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2003-2730

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179943.

The Texas Department of Insurance (the "department") received a request for "the letter that was sent . . . in regards to cancellation of [the requestor's] policy . . ." and "the original report from Nelson Engineering." You claim that a portion of the requested information is excepted from disclosure under section 552.137 of the Government Code. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Pursuant to section 552.305, you indicate that you notified Foremost County Mutual Insurance ("Foremost"), the party with a proprietary interest in the information, of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.

Initially, we note that you did not submit for our review information responsive to the portion of the request seeking a letter regarding cancellation of the requestor's policy. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, no response has been received from Foremost. Because Foremost did not submit arguments in response to the section 552.305 notice, it has provided us with no basis to conclude that the information at issue is excepted from disclosure under section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (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), 542 at 3 (1990). Therefore, we will address the department's arguments against disclosure of the information at issue.

You claim that the submitted information contains e-mail addresses that are excepted from public disclosure under section 552.137 of the Government Code.<sup>1</sup> Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. However, section 552.137 does not apply to a government employee's work e-mail address, the general e-mail address of a business, nor to a web site

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<sup>1</sup>The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

or web page. Based upon your arguments and our review of the submitted documents, we find that the information at issue is the general e-mail address of a business, and therefore section 552.137 is not applicable. The department may not withhold the e-mail addresses contained in the submitted documents under section 552.137. Thus, the submitted information must be released to the requestor in its entirety.

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

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body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 179943

Enc. Submitted documents

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