



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2003

Ms. Cynthia Villarreal-Reyna
Section Chief
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2003-8315

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# 191320.

The Texas Department of Insurance (the "department") received a request for specified documents relating to the oversight of the Commercial Indemnity Insurance Company by the Commissioner of Insurance. You state that some of the responsive information will be released but claim that the submitted Statement of Actuarial Opinion implicates a third party's proprietary interest. You also state that some of the responsive information is subject to a previous determination by this office. We have reviewed the submitted information and 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).

First, we address your claim that the submitted Statement of Actuarial Opinion may be excepted from disclosure as third party proprietary information. The requestor states to this office that the document at issue is outside the scope of his request. Therefore, we decline to rule on this information.

Next, we note that in Open Records Decision No. 640 (1996), this office concluded that section 9 of article 1.15 of the Insurance Code makes confidential information the department represents to be work papers related to examination reports concerning a carrier that was not in liquidation or receivership. In Open Records Letter No. 99-1264 (1999), this office concluded that the department may rely on Open Records Decision No. 640 as a

previous determination as to the protection afforded to information covered by section 9 of article 1.15, and the department need not ask this office for an open records ruling. The department has informed this office that some of the requested information relates to the examination of an entity regulated by the department. Thus, the department may rely on the previous determination and withhold such 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 Dep't of Pub. 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,

A handwritten signature in cursive script, appearing to read "Amy Peterson", with a long horizontal flourish extending to the right.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 191320

Enc. Submitted documents

c: Mr. Richard C. McSwain
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(w/o enclosures)