



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2004-4236

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201294.

The Office of the Attorney General (the "OAG") received a request for certain information concerning State Farm General Insurance Company and its entities ("State Farm"). You state that some of the requested information does not exist. You also state that some of the requested information will be released. You claim, however, that some of the records responsive to the request for all information "which contains statements by or on behalf of State Farm entities which state or imply mold coverage existed under HOB policies issued by the State Farm entities in 2000, 2001, and/or 2002 if the mold resulted from a covered water event" are excepted from disclosure under section 552.101 of the Government Code. In addition, you assert that the release of this information may implicate the proprietary interests of State Farm. Accordingly, you notified State Farm of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d) (permitting third party with proprietary interest 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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). Additionally, you notified other third parties that may also have an interest in the release of the responsive information. *See* Gov't Code § 552.304 (permitting

interested party to submit reasons why requested information should or should not be released). In response to your notifications, this office received comments from State Farm and the Texas Department of Insurance (the "department"). We have considered all of the submitted comments and have reviewed the submitted sample documents.¹

Initially, we address the OAG's claim that Exhibit D is protected from disclosure under 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." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Section 17.61(f) of the Business and Commerce Code provides:

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the persons who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person.

Bus. & Com. Code § 17.61(f). This provision requires the OAG to withhold from required public disclosure all documentary material the Consumer Protection Division obtained pursuant to a Civil Investigative Demand ("CID"). Here, you indicate that Exhibit D is a sample of documents obtained pursuant to CIDs issued by the Consumer Protection Division. Furthermore, you state that none of the permissive exceptions to section 17.61 apply here. Based on your argument and our review of the information, we conclude that you must withhold from disclosure documents obtained pursuant to CIDs under section 552.101 of the Government Code in conjunction with section 17.61 of the Business and Commerce Code.

You also submitted Exhibit E which consists of the following documents: State Farm's "drawer" filing and analyses of State Farm's filings by the department and the Office of Public Insurance Counsel (the "OPIC"). You explain that these documents, which were originally filed with the department, were subsequently forwarded to the OAG as part of its representation of the department in litigation. You do not assert any exceptions to disclosure on behalf of the OAG for these documents. As previously noted, you notified the three parties of their right to submit comments regarding the public nature of these documents.

¹We assume that the "sample" records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In its comments to this office, the department states, among other things, that its analysis of State Farm's filing is not responsive to the instant request. OPIC also indicated to this office that its analysis is not responsive to the request. State Farm argues that none of the records submitted as Exhibit E are responsive to the request. This office has not received any arguments from any individual or entity rebutting the claims that these records are non-responsive. Thus, after reviewing the comments and submitted records, we find that the documents in Exhibit E are not responsive to the request and, therefore, need not be released. Because we are able to make this determination, we need not address the remaining arguments submitted by the department and State Farm regarding Exhibit E.

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).

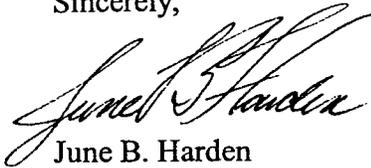
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 201294

Enc: Submitted documents

c: Mr. Rick Waterhouse
Snapka & Turman, L.L.P.
P.O. Drawer 23017
Corpus Christi, Texas 78403
(w/o enclosures)

Ms. Susan Conway
Vinson & Elkins, L.L.P.
2801 Via Fortuna, Suite 100
Austin, Texas 78746
(w/o enclosures)

Ms. Mary F. Keller
York, Keller & Field, L.L.P.
816 Congress Avenue, Suite 1670
Austin, Texas 78701
(w/o enclosures)

Mr. Rob Bordelon
Public Insurance Counsel
333 Guadalupe, Suite 3-120
Austin, Texas 78701
(w/o enclosures)

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104
(w/o enclosures)