



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2004

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

OR2004-7002

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# 207297.

The Texas Department of Insurance (“TDI”) received a request for records of complaints filed against Allstate Insurance Company, Allstate Texas Lloyds, and any other Allstate insuring company from the year 2000 to the present relating to water damage and foundation claims. The requestor specifically excluded “financial, medical, e-mail addresses or protected intra-agency information regarding the insured/complainant” from his request. You indicate that TDI will release some of the requested information. Although you do not take a position regarding the release of the remainder of the requested information,¹ you indicate that release of this information may implicate third party proprietary interests. Therefore, you notified the interested third parties—Porter Engineering, Inc. (“Porter”), Gillard Group, Inc. (“Gillard”), and Rimkus Consulting Group, Inc. (“Rimkus”)—of the request and of their right to submit arguments to this office under section 552.305 of the Government Code. *See Gov’t Code § 552.305(d)* (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 Gov’t Code §

¹Initially, you raised sections 552.101, 552.103, 552.107, 552.111, 552.136, and 552.137 of the Government Code as possible exceptions to the disclosure of the submitted information. However, you withdrew these arguments.

552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Porter and Gillard submitted arguments to this office for withholding the information. We have considered the submitted arguments and reviewed the submitted information.

We begin by noting that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Rimkus has not submitted to this office any arguments in favor of withholding its information. Therefore, Rimkus has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. *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, TDI must release the submitted information pertaining to Rimkus.

While Gillard briefed this office, it only contends that Allstate Insurance Company should be responsible for release of Allstate's reports. Gillard does not raise any specific exceptions to the disclosure of its information. Therefore, we find that TDI must release Gillard's information. *See* Gov't Code §§ 552.110(b), .305; ORD Nos. 552 at 5 (1990), 542 at 3 (1990).

Finally, Porter contends that it prepared its information "with the understanding that the information [would] be shared with no one except [its] client, the insurance company, and the homeowner through the insurance company." We note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); *see also* Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise. Porter raises no exceptions to the disclosure of its information. Therefore, we find that TDI must release Porter's information as well.²

²We note that portions of the submitted information have been redacted. To the extent this information consists of "financial, medical, e-mail addresses or protected intra-agency information regarding the insured/complainant," it is not responsive to the request and need not be released. *Economic Opportunities*

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); *Tex. 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.

Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, to the extent the information is not "financial, medical, e-mail addresses or protected intra-agency information regarding the insured/complainant," the information is responsive to the request and is required to be released.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/jh

Ref: ID# 207297

Enc: Submitted documents

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