



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2006

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

OR2006-01610

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 242669.

The Texas Department of Insurance (the "department") received a request for information concerning the revised private passenger automobile rates for a named insurance company. You state that some information has been released to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under section 552.137 of the Government Code. Additionally, you claim that portions of the remaining requested information may implicate the proprietary interests of the third party Home State Mutual Insurance Company ("Home State"), although you take no position as to whether the information is so excepted. Pursuant to section 552.305, you state, and provide documentation showing, that you notified Home State of the request and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); 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 to disclosure under the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information

Initially, we note that section 552.305 of the Government Code allows an interested third party ten business days from 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)*. Although Home State initially raised section 552.110 of the Government Code for the information at issue, Home State subsequently submitted correspondence stating that it wished to "withdraw its letter brief and any objections it may have to release of the requested materials." As Home State states that it does not object to the release of its information, the submitted information pertaining to this company may not be withheld as proprietary information.

Section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. The e-mail addresses at issue are not of the type specifically excluded by section 552.137(c). Therefore, unless the relevant individual has consented to their release, we determine that the department must withhold the e-mail addresses you have marked in accordance with section 552.137 of the Government Code.

In summary, the department must withhold the e-mail addresses marked pursuant to section 552.137 of the Government Code. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Margaret Cocere
Assistant Attorney General
Open Records Division

MC/segh

Ref: ID# 242669

Enc. Submitted documents

c: Mr. Bob Miller, Vice President
Spartan Insurance Agency
1346 Broadway
Pearland, Texas 77581
(w/o enclosures)

Mr. Bruce McCandless III
Long, Burner, Parks & DeLargy
P.O. Box 2212
Austin, Texas 78768-2212
(w/o enclosures)