



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2007

Ms. Cynthia Villarreal-Reyna
Section Chief Agency Counsel
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1A
Austin, Texas 78717-9104

OR2007-10071

Dear Ms. 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# 287004.

The Texas Department of Insurance (the "department") received a request for all complaints involving United American Insurance Company ("United American"), Farm & Ranch, and Heartland Alliance for the past four years. You state that you have released most of the requested information to the requestor. You also inform us that some of the requested information is being withheld from disclosure in accordance with a previous determination issued to the department in Open Records Letter No. 2001-4777 (2001) (concluding that department could withhold the names, addresses, telephone numbers, birth dates, social security numbers, and claim numbers of enrollees without requesting a ruling from this office). *See* Open Records Decision No. 673 at 7-9 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Although the department takes no position as to the disclosure of the submitted information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the department notified United American 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(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). United American has responded to the notice and argues that the submitted information is nonresponsive. In the alternative, United

American claims the submitted information is excepted under sections 552.101, 552.110, and 552.136 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We initially note, and you acknowledge, that the department failed to meet its obligations under section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982): A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because a third party interest is at stake, we will address whether the submitted information must be withheld to protect the interests of the third party.

Next, we address United American's claim that the submitted information is not responsive to the request for information. The requestor seeks only the complaints related to United American. Accordingly, any information other than the complaints is not responsive to this request. The submitted information consists of information that is not a complaint. Thus, this ruling does not address the public availability of the submitted information, and the department is not required to release the submitted information in response to this request. Because we find that the submitted information is not responsive to the request for information, we need not address United American's claims for exception of this 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

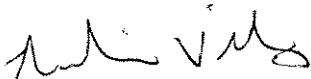
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 287004

Enc. Submitted documents

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