



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2007

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

OR2007-12222

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# 289580.

The Texas Department of Insurance (the "department") received a request for territory assignment filing #9212480991 for Farmers Texas County Mutual Insurance Company ("TCM") and territory assignment filing #9212480992 for Mid-Century Insurance Company of Texas ("MCT").¹ You claim that an e-mail address contained in the submitted documents is excepted from disclosure under section 552.137 of the Government Code. You also contend that the submitted information may contain proprietary information subject to exception under the Act. You state, and provide documentation showing, that you notified Farmers of the department's receipt of the request for information and of Farmers' right to submit arguments to this office as to why the requested information should not be released to the requestor. *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). We have considered the claimed exceptions and reviewed the submitted information.

Initially, you acknowledge that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. 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

¹Both TCM and MCT are members of Farmers Insurance Group of Companies ("Farmers"), and for purposes of this ruling will be referred to as Farmers.

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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); 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). Section 552.137 and the proprietary interests of Farmers can provide compelling reasons against the presumption the territory assignment filings are public; therefore, we will address the submitted arguments.

We note, however, that the department states that chapter 2251 of the Insurance Code is applicable to the submitted territory assignment filing. Section 107 of chapter 2251 of the Insurance Code states that, “[e]ach filing made, and any supporting information filed, under this chapter is open to public inspection as of the date of the filing.”² Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, a filing made under chapter 2251 of the Insurance Code is public, and the Act's exceptions do not apply. Accordingly, since the territory assignment filing is information made public by operation of law, no portion of it may be withheld under section 552.110 of the Government Code.

Next, we will address section 552.137 of the Government Code for the e-mail address in the cover letter and transmittal sheet which the department states are not part of the filing under chapter 2251 of the Insurance Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked is not of a type specifically excluded by section 552.137(c). Further, the submitted documentation reflects that the owner of the e-mail address did not affirmatively consent to the release of the e-mail address. *Therefore, the department must withhold the marked e-mail address in the cover letter and transmittal sheet under section 552.137. The remaining information must be released to the requestor.*

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

²Act of May 25, 2005, 79th Leg., R.S., ch. 727, § 2, 2005 Tex. Sess. Law Serv. 2140 (Vernon) (to be codified as an amendment of Tex. Ins. Code Ann. § 2251.107.)

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 289580

Enc. Submitted documents

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