



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2008

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

OR2008-05251

Dear Ms. Waitt:

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# 307989.

The Texas Department of Insurance (the "department") received a request for the most recent life settlement reports for five named companies. You state that you have provided the requestor with the requested reports pertaining to Life Trust, LLC and Abacus Settlements, Inc. You state you have no responsive information for The Settlement Group, Inc.¹ Although you take no position with respect to the public availability of the submitted information pertaining to Maple Leaf Financial, Inc. ("Maple Leaf") and Life Equity, LLC ("Life Equity"), you believe this information may implicate the proprietary interests of Maple Leaf and Life Equity. Accordingly, you notified these companies of this request for information and of their right to submit arguments to this office as to why the submitted 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). We have reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Maple Leaf and Life Equity have not submitted to this office any reasons explaining why their information should not be released. Thus, we have no basis for concluding that any portion of the information pertaining to these companies constitutes proprietary information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, as no other arguments against disclosure have been raised, this 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 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

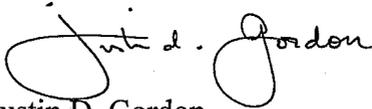
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 307989

Enc. Submitted documents

c: Ms. Cathy Backes
Senior Reference Librarian
Cadwalader, Wickersham & Taft, LLP
One World Financial Center
30th Floor, Library
New York, New York, 10281
(w/o enclosures)

Mr. Al Weinberger
Senior Partner
AAA Settlements, Inc.
858 Bedford Avenue, Suite 4B
Brooklyn, New York 11205
(w/o enclosures)

Mr. Brian Smith
Life Equity, LLC
3 Norman Street
Goose Creek, South Carolina 29445
(w/o enclosures)

Ms. Dawn Frattarelli
Maple Leaf Financial, Inc.
7316 Wisconsin Avenue, #500
Bethesda, Maryland 20814
(w/o enclosures)