



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 30, 2008

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

OR2008-08801

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# 314550.

The Texas Department of Insurance (the "department") received a request for the last few rate filings of Texas Mutual Insurance Company ("Texas Mutual"), including the most recently approved filing effective prior to January 1, 2008. You state that the department has released a portion of the requested information to the requestor. You claim that a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You state that release of the submitted document 92928 may implicate the proprietary interests of Texas Mutual. Accordingly, you inform us, and provide documentation showing, that you notified Texas Mutual of the request and of its right to submit arguments to this office as to why document 92928 should not be released. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). Texas Mutual, in correspondence to this office, asserts that document 92928 is not within the scope of the request, and, in the alternative is excepted from disclosure under section 552.110 of the Government Code. *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, Texas Mutual asserts that document 92928 is not a "rate filing" and it is therefore outside of the scope of the request. However, the department states that document 92928 is a rate filing. Because the department has determined that document 92928 is responsive to

the request, we will address the applicability of Texas Mutual's arguments against its disclosure.

Next, Texas Mutual claims that document 92928 is excepted from disclosure under section 552.110 of the Government Code. We note that the department informs us that chapter 2053 of the Insurance Code is applicable to document 92928, which it states is a worker's compensation rate filing. Section 2053.004 of the Insurance Code states that, "[e]ach filing made, including any supporting information filed, under this subchapter is open to public inspection as of the date the filing is made." Thus, a filing made under chapter 2053 of the Insurance Code is public information. Information that is specifically made public by statute may not be withheld from disclosure under any of the exceptions in the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Because document 92928 is information made public by section 2053.004 of the Insurance Code, it may not be withheld under section 552.110 of the Government Code. Accordingly, document 92928 must be released.

Next, we will address section 552.137 of the Government Code for the e-mail address in the submitted transmittal form, which the department represents is not part of the submitted rate filing. 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 in the submitted transmittal form is not of a type specifically excluded by section 552.137(c). Further, you state that the owner of the e-mail address did not affirmatively consent to its release. Therefore, the department must withhold the marked e-mail address under section 552.137. The remaining information in the transmittal form as well as the attached forms 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)*. If the governmental body does not file suit over 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

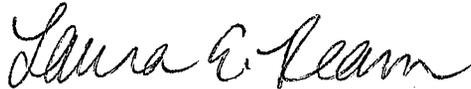
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/mcf

Ref: ID# 314550

Enc. Submitted documents

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