



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2008

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
Legal Services Division, Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2008-08822

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# 313019.

The Texas Department of Insurance (the "department") received a request for two homeowners rate filings submitted by Allstate Fire and Casualty Insurance Company ("Allstate"). You claim that portions of the requested information are excepted from disclosure under section 552.137 of the Government Code. However, as to the remaining requested information you make no arguments and take no position as to whether it is excepted from disclosure. You instead indicate that the submitted information may be subject to third-party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified Allstate of the request and of its 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). As of the date of this letter, we have not received correspondence from Allstate. We have considered the department's arguments and reviewed the submitted information.

Initially, we note, and 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. *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) (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 Allstate can provide compelling reasons against the presumption of openness; therefore, we will address the submitted arguments.

Next, we note that you contend that both of the rate filings at issue are subject to section 2251.107 of the Insurance Code. You explain that both submitted filings are homeowners insurance rate filings, and note that section 2251.107 of the Insurance Code applies to homeowners insurance. *See* Ins. Code § 2251.003. You further explain that the information included with filing number 89016, a schedule of rates and statistics used to support the rates, is information "deemed as part of the filing by statute." *See id.* § 2251.101(b).

Chapter 2251 of the Insurance Code concerns rates of insurance. *See id.* §§ 2251.001 - 2251.252. Section 2251.107 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." *See id.* § 2251.107. 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 information, and the Act's exceptions do not apply. Accordingly, because the submitted homeowners rate filings are information made public by section 2251.107 of the Insurance Code, no portion of them may be withheld under section 552.110 or section 552.137 of the Government Code. We therefore conclude that the department must release the submitted information 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 313019

Enc. Submitted documents

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