



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 8, 2008

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

OR2008-12295

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# 321095.

The Texas Department of Insurance (the "department") received a request for information pertaining to the requestor's client's termination of appointment from AFLAC. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 4001.206 of the Insurance Code states:

(a) On termination of the appointment of an agent for cause, the insurer or agent shall immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement, the department shall record the termination of the appointment of that agent to represent the insurer in this state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in a court action or proceeding except under a subpoena issued by a court of record.

(c) A person, including an insurer or an employee or agent of an insurer, who provides without malice information required to be disclosed under this section is not liable for providing the information.

Ins. Code § 4001.206. The submitted information consists of an appointment cancellation form and supporting information submitted to the department. Based on your representations and our review, we find that the submitted records are confidential, and must be withheld in their entirety under section 552.101 in conjunction with section 4001.206 of the Insurance Code.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 321095

Enc. Submitted documents

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(w/o enclosures)