



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2008

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel Section
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2008-17312

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# 330593.

The Texas Department of Insurance (the "department") received a request for the "Form C" filed by a specific company in 1999. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the department notified Lincoln Memorial Life Insurance Company and Memorial Service Life Insurance Company ("Lincoln") of the request for information and of its right to submit arguments to this office as to why the requested 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 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 statute.

You argue the submitted information is confidential under former section 10 of article 21.49-1 of the Insurance Code, which provided as follows:

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person . . . pursuant to Section 3, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person . . . without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

Ins. Code art. 21.49-1, § 10. You inform us, however, that article 21.49-1 was repealed effective June 1, 2003. *See* Act of May 25, 1971, 62nd Leg., R.S., ch. 356, § 1, 1971 Tex. Gen. Laws 1334, *repealed by* Act of May 22, 2001, 77th Leg., R.S., ch. 1419, § 31(a), 2001 Tex. Gen. Laws 4208. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with former section 10 of article 21.49-1 of the Insurance Code.

You also state that the confidentiality of a Form C filing is now governed by section 823.011 of the Texas Insurance Code, which states:

(a) This section applies only to information, including documents and copies of documents, that is:

(1) reported under Subchapter B; or

(2) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

(b) The information shall be treated confidentially and is not subject to subpoena. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected affiliates notice and an opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

Ins. Code § 823.011. You state that section 823.011 “does not except Form C filings from disclosure.” Based on this statement, we understand you to assert that the submitted information was not reported under subchapter B of chapter 823 of the Insurance Code, or obtained by or disclosed to the commissioner or another person in the course of an examination under subchapter H of chapter 823 of the Insurance Code. Accordingly, we conclude that the submitted information is not confidential under section 823.011 of the Insurance Code and may not be withheld on that basis under section 552.101 of the Government Code.

Next, we note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, Lincoln has not submitted any comments to this office explaining how release of the information at issue would affect its proprietary interests. Therefore, Lincoln has not provided us with any basis to conclude that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Accordingly, the department may not withhold any of the submitted information on that basis. As you raise no further arguments against disclosure, the submitted information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/eeg

Ref: ID# 330593

Enc. Submitted documents

cc: Requestor
(w/o enclosures)