



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal Services Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-00655

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# 332302 (TDI Nos. 83866, 83785).

The Texas Department of Insurance (the "department") received a request for the latest rate filings, including the form rules and rates, for State Farm Insurance Company, Allstate Fire and Casualty Insurance Company ("Allstate"), and Texas Farmers Insurance Company ("Farmers"). You state you have released a portion of the requested information. Although you take no position on the remaining information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state and provide documentation showing the department notified Allstate and Farmers of the request for information and of their 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). A representative of Farmers, in correspondence to this office, asserts the submitted information pertaining to Farmers is not within the scope of the request, and, in the alternative, is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. *See id.* We have considered the submitted arguments and reviewed the submitted information.

We note 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, Allstate has not submitted to this office any reasons explaining why its submitted information should not be released. Therefore, Allstate has not provided us with any basis to conclude it has protected proprietary interests in any of the submitted 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). Accordingly, we conclude the department may not withhold any portion of the submitted information on the basis of any proprietary interest Allstate may have in the information.

We note the department in its brief to this office raised section 2251.107 of the Insurance Code in connection with the request for Farmers' information. Section 2251.107 states "[e]ach filing made, and any supporting information filed, under this chapter is open to public inspection as of the date of the filing." Ins. Code § 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. The department states the filing at issue, link # 94576, was processed as a rate filing and the submitted information is contained within link # 94576. Farmers asserts the submitted information is "additional information" it submitted after the department closed its March 14, 2008 rate filing, and is therefore not subject to the request because it is not a "rate filing" or supporting information to a rate filing. However, Farmers submitted the information at issue to the department in response to the department's inquiry regarding link # 94576. Accordingly, we find the submitted information is supporting information and is therefore subject to the request and made public by section 2251.107 of the Insurance Code. Therefore, no portion of the submitted information may be withheld under section 552.101 or section 552.110 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 332302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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