



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2009

Ms. Cynthia Villareal-Reyna
Department of Insurance
Legal Services Division
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-00901

Dear Ms. Villareal-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# 332781 (TDI# 81790).

The Texas Department of Insurance (the "department") received a request for information relating to two specified enforcement files. You state you have released a portion of the requested information. Although you take no position on the submitted information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, the department notified National Guard Life Insurance Company and Western Fraternal Life Association of the request for information and of each company's right to submit arguments to this office as to why the submitted 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 reviewed the submitted information.

Initially, you state the requestor indicates he does not wish to receive "individually identifiable personal[] financial[] or medical information of the affected insureds." You have bracketed this information in the submitted documents. You indicate this information is not responsive to the present request for information. The Act requires a governmental body to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we agree this type of the information

is not responsive to the instance request. Accordingly, we do not address the public availability of the bracketed non-responsive information, and the department need not release it to the requestor.

Next, we note, and you acknowledge, the department has failed to comply with section 552.301 of the Government Code in requesting this decision. 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 Gov't Code* § 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the notified third parties.

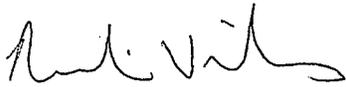
We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from either of the notified third parties. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of the notified third parties, and the department may not withhold any portion of this information on that basis. *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). As no exceptions to disclosure have been raised for the submitted responsive information, it must be released.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 332781

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: CT Corporation System
For National Guardian Life Insurance Company
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(w/o enclosures)

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