



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2009

Ms. Cynthia Villarreal-Reyna
Legal and Regulatory Affairs Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-08777A

Dear Ms. Villarreal-Reyna:

This office issued Open Records Letter No. 2009-08777 (2009) on June 25, 2009. Since this time, we have determined that Open Records Letter No. 2009-08777 is incorrect. When this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2009-08777. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 354749.

The Texas Department of Insurance (the "department") received a request for information related to two specified claims. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.111, 552.136, and 552.137 of the Government Code. You also indicate release of the requested information may implicate the proprietary interests of Texas Windstorm Insurance Association ("TWIA"). Thus, pursuant to section 552.305 of the Government Code, you have notified TWIA of the request and of its right to submit arguments to this office as to why its information should not be released. *See id.* § 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 in certain

circumstances). We have received comments from a representative of TWIA. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us that the submitted documents bate stamped TWIA are records of TWIA that were submitted to this office by TWIA, not the department. TWIA seeks to withhold this additional information from disclosure. However, this ruling does not address information that was not submitted by the department and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

We next note that the information submitted by the department was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-07255 (2009). In that ruling, we ruled the department must withhold only the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, a marked insurance policy number under section 552.136 of the Government Code, and the marked e-mail addresses under section 552.137 of the Government Code. Further, in the previous request for a ruling, you stated that you released some of the responsive information to the requestor. You now seek to withhold the information that was previously released or ruled upon in response to this earlier request for information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.* 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released or ruled upon information unless its release is expressly prohibited by law or the information is confidential by law. Although the department seeks to withhold the submitted information under section 552.103 of the Government Code, we note that this exception does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at n.5 (2000) (discretionary exceptions generally). Accordingly, because most of the submitted information has already been released to members of the public in response to the request for information ruled upon in Open Records Letter No. 2009-07255, the department may not now withhold that information under section 552.103 of the Government Code. The department must, however, continue to rely on Open Records Letter No. 2009-07255 with respect to the previously requested and ruled

upon information.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/eeg

Ref: ID# 354749

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)

¹As we are able to make this determination, we need not address the department's or TWIA's arguments with regard to this information.