



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

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

OR2009-13565

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# 356561 (TDI # 93616).

The Texas Department of Insurance (the "department") received a request for correspondence between the department and AFLAC. Although you take no position as to the disclosure of the submitted information, you state the information may implicate the proprietary interests of a third party. You state, and provide documentation showing, you have notified the AFLAC of the request and of its opportunity to submit comments to this office as to why the information at issue should not be released to the requestor. *See Gov't Code § 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 the applicability of exception to disclose under Act in certain circumstances).* We have reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). In addition, pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). We note that the department received the request for information on June 30, 2009.¹ However, you did not request a ruling from this office or submit the requested information for our review until July 23, 2009. Thus, the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third party interests may be at stake, we will consider whether the submitted information must be withheld on the basis of AFLAC's proprietary interests.

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 decision, this office has not received any correspondence from AFLAC. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate AFLAC's proprietary interest. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest AFLAC may have in the information.

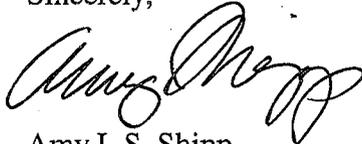
¹You provide documentation showing that the requestor modified her request to exclude attachments to the requested correspondence in response to an estimate of charges she received from the department. *See* Gov't Code § 552.2615(b) (requiring the requestor to accept the charges, modify the request, or send complaint of overcharge to this office within ten days after date estimate is sent to the requestor). We note that section 552.2615 provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); *see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications to clarify or narrow request for information will toll section 552.301(b) deadlines).

We note some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.² Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Therefore, the department must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.³

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 356561

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (198).

³We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

c: Paul Shelby Amos
President
AFLAC
1932 Wynnton Road
Colymbus, Georgia 31999
(w/o enclosures)