



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 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

OR2009-13753

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# 356896 (TDI ORR# 93621).

The Texas Department of Insurance (the "department") received a request for information pertaining to a specified filing by Progressive County Mutual Insurance Company ("Progressive"). You claim that a portion of the requested information is excepted from disclosure under section 552.137 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of Progressive. Accordingly, you inform us, and provide documentation showing, that you notified Progressive of the request and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received comments from an attorney representing Progressive. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and the department acknowledges, that the department failed to comply with the procedural requirements of section 552.301 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; *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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the 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 the proprietary interest of a third party is at stake and because section 552.137 of the Government Code presents a compelling reason against disclosure, we will address the submitted arguments.

We note that the department, in its brief to this office, states chapter 2251 of the Insurance Code applies to the information at issue. Section 107 of chapter 2251 of the Insurance Code states that, “[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. Although Progressive asserts that the information at issue was filed pursuant to chapter 2253 of the Insurance Code, the department states that the filing at issue, link number 103032, was processed as a rate filing under chapter 2251. The department also states all of the submitted information is contained in link number 103032. Thus, based on the department's representations, we find that section 2251.107 applies to the submitted rate filing information. Although we understand Progressive to contend that the submitted information is excepted from disclosure under section 552.110 of the Government Code, information that a statute specifically makes public may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, because a filing made under chapter 2251 of the Insurance Code is made public by section 2251.107, none of the submitted information may be withheld under sections 552.110 or 552.137 of the Government Code.

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 356896

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Jay Thompson
Attorney for Progressive County Mutual Insurance Company
701 Brazos Street, Suite 1500
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(w/o enclosures)