



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2010

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

OR2010-10590

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# 386898 (TDI# 103700).

The Texas Department of Insurance (the "department") received a request for all documents relating to or mentioning three named companies, including, but not limited to every document pertaining to a specified cause number. You state that you have provided some information to the requestor. You state will redact motor vehicle record information under section 552.130 of the Government Code, access device numbers under section 552.136 of the Government Code, and e-mail addresses under section 552.137 of the Government Code.¹ You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes information which is subject to sections 552.022(a)(3) and 552.022(a)(16) of the Government Code. Section 552.022(a)(3)

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including certain motor vehicle record information under section 552.130 of the Government Code, certain access device numbers under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

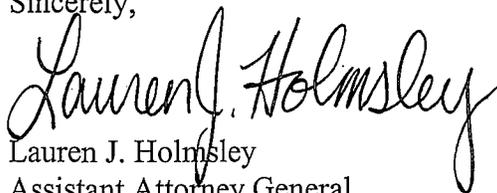
provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Gov't Code § 552.022(a)(3). Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly confidential under "other law." Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under sections 552.103, 552.107, and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See 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 Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103, 552.107, and 552.111 are not other laws that make information confidential for the purposes of section 552.022. Thus, the department may not withhold any of the information subject to section 552.022 under these exceptions. The Texas Supreme Court has held, however, that the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" that makes information confidential for the purposes of section 552.022(a). *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege also is found at Texas Rule of Evidence 503, and the attorney work product privilege also is found at Texas Rule of Civil Procedure 192.5. Accordingly, we will consider your assertions of those privileges under rules 503 and 192.5. Furthermore, because information subject to sections 552.022(a)(3) and 552.022(a)(16) may be withheld under section 552.101 of the Government Code, we will consider your arguments under that exception for the information subject to section 552.022, as well as for the remaining information.

This office issued Open Records Letter No. 1999-1264 (1999), which serves as a previous determination under section 552.301(a) of the Government Code for the department to withhold work papers related to examination reports concerning a carrier that is not in liquidation or receivership. *See Open Records Decision No. 640 at 4 (1996)* (department must withhold any information obtained from audit "work papers" that are "pertinent to the accountant's examination of the financial statements of an insurer" under previous version of section 401.058 of the Insurance Code). The submitted information concerns the department's records regarding the three named insurance companies prior to entering into receivership on May 14, 2008. Thus, pursuant to the previous determination, the department must withhold the submitted information in accordance with Open Records Letter No. 1999-1264. *See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001)* (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). As our ruling is dispositive, we need not address your remaining arguments against 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, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 386898

Enc. Submitted documents

c: Requestor
(w/o enclosures)