



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2010

Ms. Susan Denmon Banowsky
Vinson & Elkins, L.L.P.
For Texas Windstorm Insurance Association
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568

OR2010-12030

Dear Ms. Banowsky:

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# 389814.

The Texas Windstorm Insurance Association (the "association"), which you represent, received a request for a preliminary audit of the association. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 401.051 of the Insurance Code requires the Texas Department of Insurance (the "department"), or an examiner appointed by the department, to visit each insurance carrier and examine the carrier's financial condition, ability to meet liabilities, and compliance with the laws affecting the conduct of the carrier's business. Ins. Code § 401.051(a), (b). In connection with this examination process, section 401.058 states:

- (a) A final or preliminary examination report and any information obtained during an examination are confidential and are not subject to disclosure under [the Act].

(b) Subsection (a) applies if the examined carrier is under supervision or conservatorship. Subsection (a) does not apply to an examination conducted in connection with a liquidation or receivership under this code or another insurance law of this state.

Id. § 401.058. The association states that the submitted report was created by the department during the course of examinations under chapter 401 of the Insurance Code. However, the present request is for information held by the association, not the department. The association has not explained how or why section 401.058 would be applicable to information in its possession. *See* Open Records Decision No. 640 at 4 (1996) (the 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 statutory predecessor to section 401.058). Thus, you have failed to demonstrate that the submitted information is confidential under section 401.058 of the Insurance Code, and the association may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the submitted information consists of audit working papers maintained by the association in conjunction with an audit conducted by the department. We note, however, that section 552.116 is intended to protect the auditor's interests. In this instance, the audit is being conducted by the department. The information at issue is maintained by the association, the auditee. As the auditee, the association cannot assert section 552.116 in order to protect its own interest in withholding the information. Accordingly, section 552.116 is inapplicable and does not protect the submitted information from disclosure. As you raise no further arguments against disclosure, the submitted information must be released to the requestor.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 389814

Enc. Submitted documents

c: Requestor
(w/o enclosures)