



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2010

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

OR2010-14730

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# 395251 (TDI# 106130).

The Texas Department of Insurance (the "department") received a request for the department's file pertaining to a specified complaint. You state you have released some of the requested information to the requestor. Although the department takes no position on whether the submitted information is excepted from disclosure, you state the release of this information may implicate the proprietary interests of interested third parties. Accordingly, you state, and provide documentation showing, you have notified Galveston Insurance Associates ("Galveston Insurance") and Premium Assignment Corporation ("Premium") of the request and of their right to submit arguments to this office as to why the submitted information 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records

decision from this office. *See* Gov't Code § 552.301(b). 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 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 id.* § 552.302; *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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the third parties.

We note 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) of the Government Code 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 letter, we have not received any comments from Galveston Insurance or Premium. Thus, we have no basis for concluding that any portion of the submitted information constitutes the proprietary information of these third parties. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the department may not withhold any of the submitted information based on the proprietary interests of Galveston Insurance or Premium.

We note the submitted information includes an insurance policy number and account number that are subject to section 552.136 of the Government Code.¹ Section 552.136 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(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the department must withhold the insurance policy number and account number we have marked pursuant to section 552.136 of the Government Code.² The remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 395251

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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