



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

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

OR2011-06902

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# 417742 (TDI No. 113263).

The Texas Department of Insurance (the "department") received a request for all enforcement, regulatory, and licensing files regarding the Hartford Financial Services Group, Inc. ("Hartford Financial") and the Hartford Underwriter's Insurance Company ("Hartford Underwriter's"). You state you will redact some information pursuant to Open Records Decision No. 684 (2009).¹ Although you take no position on the public availability of the submitted information, you state the release of this information may implicate the proprietary interests of Hartford Financial and Hartford Underwriter's. Accordingly, you state, and provide documentation showing, you have notified these companies of the request and of their right to submit arguments to this office as to why the requested information should not be released. *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

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code; credit card, debit card, charge card, insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge, you failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b), (e). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can generally be overcome by demonstrating 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). Accordingly, we will consider whether the third parties' interests provide a compelling reason to withhold any portion of the submitted information from disclosure.

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 arguments from Hartford Financial or Hartford Underwriter's. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary information of Hartford Financial or Hartford Underwriter's. *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 Hartford Financial or Hartford Underwriter's.

We note a portion of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no arguments have been made against the disclosure of the submitted information, it must be

released to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 417742

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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