



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 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

OR2011-08635A

Dear Ms. Villarreal-Reyna:

This office issued Open Records Letter No. 2011-08635 (2011) on June 17, 2011. We have examined this ruling and determined that Open Records Letter No. 2011-08635 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2011-08635. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 429162.

The Texas Department of Insurance (the "department") received a request for documents pertaining to specified cases. You state the department will release some information to the requestor. Although the department takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Stewart Title-Corpus Christi Division ("Stewart Title") and Sierra Title. Accordingly, you notified these companies of the request and of their right to submit arguments to this office as to why their information should not be released. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the

applicability of exception to disclose under Act in certain circumstances). We have received comments from Stewart Title. We have considered the submitted arguments and 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. *See* Gov't Code § 552.301(b). 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 Sierra Title. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary information of Sierra Title. *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 Sierra Title.

Stewart Title claims its submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 2001.081 of the Government Code and Texas Rule of Evidence 408 because the information at issue consists of settlement communications. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language

making information confidential), 465 at 4-5 (1987). Section 2001.081 of the Government Code pertains to the rules of evidence in contested administrative cases, and rule 408 of the Texas Rules of Evidence governs the admissibility of information developed through compromise negotiations. *See* Gov't Code § 2001.081; TEX. R. EVID. 408. Because neither section 2001.081 nor rule 408 explicitly provides that information is confidential, we find the department may not withhold any of Stewart Title's information from the requestor under section 552.101 of the Government Code in conjunction with section 2001.081 or rule 408.

Stewart Title also claims its submitted information is excepted from disclosure under section 552.103 of the Government Code. Because section 552.103 protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties, we do not address Stewart Title's argument under section 552.103. *See* Open Records Decision Nos. 542 (statutory predecessor to section 552.103 does not implicate the rights of a third party), 522 (1989) (discretionary exceptions in general).

We note the submitted information includes an e-mail address subject to section 552.137 of the Government Code. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).<sup>1</sup> Gov't Code § 552.137(a)-(c). We have marked an e-mail address that is not of the type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to disclosure.<sup>2</sup> As no further exceptions to disclosure are raised, the remaining information must be released.

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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</sup>The 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).

<sup>2</sup>We 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 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.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 429162

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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