ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 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

OR2011-09664

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# 422976 (TDI# 114858).

The Texas Department of Insurance (the "department") received a request for "complaints, investigation, and determinations of 'justified complaints' filed by homeowners" against a specified insurance company during a particular time period. You state some of the requested information will be released. Although the department takes no position on whether the submitted information is excepted from disclosure, you state that release of this information may implicate the proprietary interests of Cypress Texas Lloyds ("Cypress"). Accordingly, you inform us that you notified Cypress of the request and of the company's right to submit arguments to this office as to why the information at issue should not be released.[1] We have reviewed the information you submitted.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Cypress. Thus, as Cypress has not demonstrated any of the information at issue is proprietary for purposes of the Act, the department may not withhold any of the submitted information on the basis of any interest Cypress may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

[1]*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We note portions of the submitted records are subject to section 552.101 of the Government Code.[2] Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common-law privacy protects personal financial information not related to a financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). In this instance, the information at issue is related to property insurance. We find the decision to purchase insurance is a private financial decision protected by common-law privacy. We therefore conclude the department must withhold the submitted information that identifies the insureds, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note the remaining information contains e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137, unless their owners have affirmatively consented to disclosure.[3]

In summary, the department must withhold the submitted information that identifies the insureds, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the e-mail addresses we have marked under section 552.137, unless their owners have affirmatively consented to disclosure. The remaining information must be released to the requestor.

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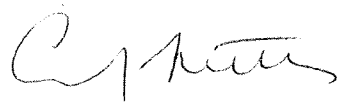
[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[3]We note Open Records Decision No. 684 (2009) is 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.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 422976

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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