



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2011

Ms. Cynthia Villarreal-Reyna
Director
Office of Agency Counsel
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-18899

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# 440203 (TDI# 120041).

The Texas Department of Insurance (the "department") received a request for the application approval filing for Sentinel Security Life Insurance Company ("Sentinel"). You state some of the responsive information will be released to the requestor. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of Sentinel. Accordingly, you state, and submit documentation showing, you notified Sentinel of the request for information and of its right to submit arguments to this office as to why its 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 received comments from Sentinel. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a

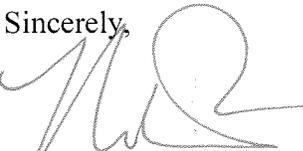
governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

Sentinel raises section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find Sentinel has only made conclusory allegations that release of its submitted information would cause the company substantial competitive injury. *See id.* Therefore, the department may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the submitted information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bs

Ref: ID# 440203

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. Earl L. Tate
President
Sentinel Life
2121 South State Street
Salt Lake City, Utah 84115
(w/o enclosures)