



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2012

Ms. Cynthia Villarreal-Reyna  
Director  
Office of Agency Counsel  
Legal Section, General Counsel Division, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2012-01339

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# 441868 (TDI# 119839).

The Texas Department of Insurance (the "department") received a request for certain records pertaining to forms of contract, application forms, and any other type of document that any of eight named life settlement providers have on file with the department. You state you will release some information to the requestor. Although you take no position with respect to the public availability of the remaining requested information, you state release of this information may implicate the proprietary interests of third parties. You inform us, and provide documentation showing, pursuant to section 552.305 of the Government Code, the department has notified the interested third parties of the request and of their right to submit arguments to this office explaining why their submitted information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Life, Maple Life, and

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<sup>1</sup>The notified third parties are: Abacus Settlements; Coventry First, L.L.C.; Financial Life Services; Life Settlement Solutions ("Life"); Maple Life Financial ("Maple Life"); and Viasource Funding Group ("Viasource").

Viasource. We have considered the submitted arguments and reviewed the submitted information.

Initially, we understand Life to contend that its information is not responsive to the request for information. We note a governmental body must make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The department has submitted the information at issue, which the department deems to be responsive to this request for information. Upon review of the submitted information, we conclude the department has made a good-faith effort to relate the request to responsive information. Therefore, we will determine whether information at issue, as well as the remaining submitted information, must be released to the requestor.

Next, Life states the requestor has agreed to withdraw his request with regard to Life's information as issue. However, the department states the requestor did not withdraw his request with regard to Life's information. Based on the department's representation that the requestor did not withdraw his request, we conclude the request at issue encompasses Life's information. Accordingly, we will determine whether Life's information must be released to the requestor.

Next, you state that some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-00311 (2012). In that ruling, we determined that the department must withhold the information we marked under sections 552.110, 552.136, and 552.137 of the Government Code and must release the remaining information. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2012-00311 as a previous determination and withhold or release that information in accordance with the prior ruling.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note, and you acknowledge, the department did not comply with its ten- or fifteen-business-day deadlines under subsections 552.301(b) and (e) in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). The submitted information, therefore, is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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). This statutory presumption

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<sup>2</sup>As our ruling is dispositive, we need not address Life's, Maple Life's, or Viasource's arguments pertaining to their annual reports.

can generally be overcome when 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). As such, we will consider whether any of the submitted information may be excepted under the Act due to third-party interests. We also note portions of the information are subject to section 552.137 of the Government Code, which provides a compelling reason to withhold information; thus, we will also address this exception for the submitted information.<sup>3</sup>

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 only received arguments from Life, Maple Life, and Viasource. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary information of any of the remaining 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 any of the remaining third parties.

Viasource argues its contracts and other agreements are excepted under section 552.110(b) of the Government Code. Section 552.110(b) protects “[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

Upon review, we find Viasource has made only conclusory allegations that release of the information at issue would result in substantial harm to its competitive position and has provided no specific factual or evidentiary showing to support such allegations. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Consequently, the department may not withhold any of Viasource's contracts and other agreements under section 552.110(b).

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<sup>3</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 of the Government Code 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 at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Finally, we note a portion of the remaining information may be protected by copyright. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, 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 copyright law and the risk of a copyright infringement suit.

In summary, the department must continue to rely on Open Records Letter No. 2012-00311 and withhold or release the responsive information at issue in accordance with that ruling. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>4</sup> The remaining responsive information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.<sup>5</sup>

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, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>4</sup>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 e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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/em

Ref: ID# 441868

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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