



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2012

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

OR2012-02434

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# 445679 (TDI# 122582).

The Texas Department of Insurance (the "department") received a request for "the identification, by name, of the insurance company or companies who have issued an Automobile Liability Policy: (1) insuring against the liability of the person or persons who were the registered owner of an automobile bearing" a specified vehicle identification number on April 17, 2011; and (2) "that was in effect on April 17, 2011." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note most of the submitted information is not responsive to the request for information because it is not the requested insurance company information. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to the present request.

Next, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would

allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the department received the request for information on November 7, 2011. Thus, the ten-business-day deadline for requesting a ruling from this office was November 22, 2011, and the fifteen-business-day deadline was December 1, 2011. However, you did not request a ruling from this office, state the claimed exceptions, or submit the information required by section 552.301(e) until December 12, 2011, which was after both the ten-day-deadline and the fifteen-day-deadline had passed. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that 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). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider whether any of the submitted information is excepted from disclosure under this section.

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. Section 552.101 encompasses information protected by other statutes. Section 601.452(a) of the Transportation Code provides that “[t]he [department] in consultation with [the Department of Public Safety, Department of Motor Vehicles, and Department of Information Resources] shall establish a program for verification of whether owners of motor vehicles have established financial responsibility.” Transp. Code §§ 601.452(a), .451. You inform us that, pursuant to section 601.452(a), the department established the TexasSure database as the verification program. *See id.* §§ 601.452(a), .453 (department shall select agent to develop, implement, operate, and maintain verification program). Each insurance company providing motor vehicle liability insurance policies in this state must provide necessary information regarding those policies to the TexasSure database. *See id.* § 601.454(a); *see also* 28 T.A.C. § 5.604 (reporting requirements for insurers). Pursuant to section 601.454(c) of the Transportation Code, “[i]nformation

obtained under [subchapter N of chapter 601 of the Transportation Code] is confidential.”
Transp. Code § 601.454(c).

You inform us the responsive information at issue is located in the TexasSure database, created under subchapter N of chapter 601 of the Transportation Code, and indicate it was obtained from an insurance company. Therefore, the responsive information you have highlighted is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 601.454(c) of the Transportation Code.

Finally, you ask this office to issue a previous determination permitting the department to withhold TexasSure database information under section 552.101 of the Government Code in conjunction with section 601.454(c) of the Transportation Code. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 445679

Enc. Submitted documents

c: Requestor
(w/o enclosures)