



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

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

OR2012-02760

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# 446082 (TDI# 122528).

The Texas Department of Insurance (the "department") received a request for the number of insured lives and a copy of the withdrawal plans for four specified insurance companies. You state you have released the responsive information pertaining to two of the insurance companies. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of American Republic Insurance Company ("American Republic") and World Insurance Company ("World"). Accordingly, you state, and submit documentation showing, you notified American Republic and World of the request for information and of their 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 a representative of American

Republic and World. 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.

American Republic and World raise section 552.110(b) of the Government Code for a portion of the information at issue. 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 American Republic and World have established that release of the information at issue would cause the companies substantial competitive injury. Therefore, the department must withhold the information we have marked under section 552.110(b) of the Government Code.¹ As no further exceptions to disclosure have been raised, the department must release the remaining 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,

¹As our ruling is dispositive, we need not address American Republic and World's remaining argument.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a horizontal line extending to the right.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 446082

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Bruce McCandless III
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(w/o enclosures)