



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2012

Mr. Miles J. LeBlanc  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2012-14748

Dear Mr. LeBlanc:

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# 465031.

The Houston Independent School District (the "district") received a request for ten categories of "active insurance policies" of the district. Subsequently, the requestor narrowed the scope of the request by excluding category ten. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). You state the district has no information responsive to two categories of the request.<sup>1</sup> You also state some information has been released to the requestor. You claim the submitted information is excepted from

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision[,]” and is applicable to information deemed confidential by statute. Gov’t Code § 552.101. You raise section 552.101 of the Government Code in conjunction with section 981.158 of the Insurance Code.

Chapter 981 of the Insurance Code sets out a method for the residents of Texas to obtain insurance from eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents if coverage is not available from authorized and regulated insurers engaged in business in this state. *See* Ins. Code § 981.001(c); *see also id.* §§ 981.002(4) (defining surplus lines insurance), .004(a) (authorizing surplus lines insurance if insurance can not be obtained from authorized and regulated insurer). An “eligible surplus lines insurer” is “an insurer that is not an authorized insurer, but that is eligible [to issue surplus lines insurance] under Subchapter B [of chapter 981] . . . .” *Id.* § 981.002(1); *see id.* §§ 981.051-.065 (concerning eligibility requirements for surplus lines insurer); 28 T.A.C. § 15.8 (same).

The Surplus Lines Stamping Office of Texas (the “stamping office”) is a nonprofit association which receives and reviews each surplus lines insurance contract that a surplus lines agent files and provides to the Commissioner of Insurance (the “commissioner”) an evaluation of the eligibility of each surplus lines contract and each surplus lines insurer. Ins. Code §§ 981.151, .154. Within sixty days of the effective date or the issue date of new or renewal surplus lines insurance, a surplus lines agent is required to file with the stamping office “(1) a copy of the policy issued; or (2) if the policy has not been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.” *Id.* § 981.105(a).

Subchapter D of chapter 981 concerns the stamping office and includes provisions pertaining to its board of directors, plan of operation, powers and duties, and commissioner supervision. *See id.* §§ 981.152-.155. The subchapter also includes two provisions that exempt the stamping office from certain Texas laws. Section 981.159 provides an “Exemption From Library and Archives Law” and section 981.158 provides an “Exemption from Public Information Law.” *See id.* §§ 981.158-.159. Section 981.158(a) of subchapter D provides as follows:

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<sup>2</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) An individual surplus lines insurance contract filed with the stamping office is:

(1) confidential; and

(2) not public information under [the Act].

*Id.* § 981.158(a). Thus, section 981.158(a) provides that a surplus lines insurance contract filed with the stamping office is confidential and not public information under the Act.

You assert the district's surplus lines policies are confidential under section 981.158(a). You explain the majority of the district's insurance policies are surplus lines policies. We understand the policies at issue were delivered to the district by the insurers that issued the policies. You state "a surplus line tax and a stamping office fee have been assessed and paid" for the district's surplus lines policies. Thus, we understand you to represent that the district's surplus lines policies have been filed with the stamping office.

We believe the "Exemption from Public Information Law" in section 981.158(a) applies to records of the stamping office. Thus, section 981.158(a) protects surplus lines insurance policies in the custody of the stamping office. In this instance, the information at issue is held by the district, the insured party. Therefore, we find you have failed to demonstrate the information at issue is confidential under section 981.158(a) of the Insurance Code, and the district may not withhold it under section 552.101 of the Government Code on that basis. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (as general rule, statutory confidentiality under section 552.101 requires express language making information confidential).*

Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>3</sup> Gov't Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers we have marked in Attachment 2 under section 552.136 of the Government Code. The district must release the remaining information.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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/eb

Ref: ID# 465031

Enc. Submitted documents

c: Requestor  
(w/o enclosures)