



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 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 78711-2548

OR2012-15662

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# 465217 (TDI# 125442).

The Texas Department of Insurance (the "department") received a request for twenty categories of information related to various policy forms, endorsements, and policies. You state the submitted information is generally subject to subchapter A of chapter 2301 of the Insurance Code. Although you take no other position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, you state you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ Gov't Code § 552.305(d); *see*

¹The third parties notified pursuant to section 552.305 are: 21st Century Advantage Insurance Company; ACCC Insurance Company; Access Insurance Company; AIU Insurance Company; Allstate Fire and Casualty Insurance Company; Allstate Insurance Company; Allstate Texas Lloyd's; American Casualty Company of Reading, Pen.; American Hallmark Insurance Company of Texas; American Modern Home Insurance Company; American Modern Lloyd's Insurance Company; American Reliable Insurance Company; American Service Insurance Company, Inc.; American Standard Lloyd's Insurance Company; American National County Mutual Insurance Company; Amica Lloyd's of Texas; Amica Mutual Insurance Company; Balboa Insurance Company; Chubb Lloyds Insurance Company of Texas; Chubb National Insurance Company; Church Mutual Insurance Company; Colonial County Mutual Insurance Company; Commercial Alliance Insurance Company; Consolidated Lloyds; Consumers County Mutual Insurance Company; The Continental Insurance Company; Dairyland County Mutual Insurance Company of Texas; Direct General Insurance Company; Encompass Insurance Company of America; Essentia Insurance Company; Farmers Insurance

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 to disclosure under the Act in certain circumstances). We have received briefs submitted by 21st Century Advantage Insurance Company (“21st Century”), Farmers Insurance Exchange (“Farmers”), Fire Insurance Exchange (“FIE”), Farmers Texas County Mutual Insurance Company (“FTCMIC”), Foremost County Mutual Insurance Company (“FCMIC”), Foremost Lloyds of Texas (“Foremost”), Texas Farmers Insurance Company (“Texas Farmers”), Home State County Mutual Insurance Company (“Home State”), Old American County Mutual Fire Insurance Company (“Old American”), Republic Lloyds (“Republic”), and Southern County Mutual Insurance (“Southern”). We have considered the submitted briefs and reviewed the submitted information.

Initially, we note this request for information was ruled upon in Open Records Letter No. 2012-05012 (2012), which was issued on April 9, 2012. In that ruling, we determined the department may withhold certain information under section 552.107 of the Government Code. You now submit additional information for our review. Thus, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly submitted information. *See* Gov’t Code § 552.301. Pursuant to section 552.302 of the Government Code, a

Exchange; Farmers Texas County Mutual Insurance Company; Federal Insurance Company; Fire Insurance Exchange; First Acceptance Insurance Company, Inc.; The First Liberty Insurance Corporation; Foremost County Mutual Insurance Company; Foremost Lloyds of Texas; GEICO Indemnity Company; Germania Fire & Casualty Company; Germania Insurance Company; Germania Select Insurance Company; Government Employees Insurance Company; Great Northern Insurance Company; Hallmark County Mutual Insurance Company; Hartford Accident and Indemnity Company; Hartford Lloyd's Insurance Company; Highlands Insurance Company; Homeowners of America Insurance Company; Home State County Mutual Insurance Company; Horace Mann Insurance Company; Horace Mann Lloyds; Horace Mann Property & Casualty Insurance Company; IDS Property Casualty Insurance Company; Imperial Fire and Casualty Insurance Company; Infinity County Mutual Insurance Company; Integon National Insurance Company; Kemper Independent Insurance Company; Liberty County Mutual Insurance Company; Liberty Insurance Corporation; Liberty Mutual Fire Insurance Company; Loya Insurance Company; Lumbermens Insurance Company of Texas; Markel American Insurance Company; Mercury County Mutual Insurance Company; Metropolitan Direct Property and Casualty Insurance Company; Metropolitan Lloyds Insurance Company of Texas; Milemeter Insurance Company; National General Insurance Company; National Interstate Insurance Company; Nationwide Lloyds; Nationwide Mutual Fire Insurance Company; Nationwide Mutual Insurance Company; The Northern Assurance Company of America; Oak Brook County Mutual Insurance Company; Old American County Mutual Fire Insurance Company; Onebeacon America Insurance Company; Onebeacon Insurance Company; Progressive County Mutual Insurance Company; QBE Insurance Corporation; Republic Lloyds; Safeco Lloyds Insurance Company; Santa Fe Auto Insurance Company; Southern County Mutual Insurance; Sparta Insurance Company; State Farm Fire and Casualty Company; State Farm General Insurance Company; State Farm Lloyds; State Farm Mutual Automobile Insurance Company; Teachers Insurance Company; Texas Farm Bureau Mutual Insurance Company; Texas Farm Bureau Underwriters; Texas Farmers Insurance Company; Tokio Marine & Nichido Fire Insurance Company, Ltd.; Transportation Insurance Company; Trinity Universal Insurance Company; Union Standard Lloyds; United Services Automobile Association; USAA Casualty Insurance Company; USAA County Mutual Insurance Company; USAA General Indemnity Company; United States Liability Insurance Company; Unitrin County Mutual Insurance Company; Unitrin Direct Insurance Company; Universal North America Insurance Company; Utica Lloyd's of Texas; Valley Forge Insurance Company; Viking Insurance Company of Wisconsin; and Vision Insurance Company.

governmental body's failure to comply with the requirements of section 552.301 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third party interests can provide a compelling reason for non-disclosure, we will address the third parties' arguments against disclosure of the submitted information.

We note Republic seeks to withhold information that the department did not submit for our review. Because Republic's information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). In addition, we note that for certain categories of the request, the requestor seeks information created "in the last 10 years." You state that the request was received on March 8, 2012. Thus, any information responsive to these categories of the request created prior to March 8 of 2002 is not responsive to the request. Accordingly, the portion of the submitted information created outside of the time frame specified in the request for this information is not responsive to the request and need not be released to the requestor.

Pursuant to section 552.303(c) of the Government Code, this office asked the department to provide us with additional information concerning the public availability of the submitted information. Specifically, this office asked the department whether any of the submitted information falls under section 2301.009 of the Insurance Code, and to provide this office with a detailed explanation as to which types of information submitted to this office are, or are not, subject to section 2301.009. Section 2301.009 is part of subchapter A of chapter 2301 of the Insurance Code, entitled "Policy Forms Generally," which requires, at section 2301.006, that "an insurer may not deliver or issue for delivery in this state a form for use in writing insurance described by Section 2301.003 unless the form has been filed with and approved by the commissioner." Ins. Code § 2301.006(a). Section 2301.002(1) states that "[f]orm" means an insurance policy form or a printed endorsement form." *Id.* § 2301.002(1). Section 2301.009 states "[e]ach filing made, and any supporting information filed, under this subchapter is open to public inspection as of the date of the filing." *Id.* § 2301.009. "Supporting information" is defined for purposes of subchapter A of chapter 2301 as "any information required by the department to be filed." *Id.* § 2301.002(3).

In response to our office's request for additional information, the department did not specifically identify which types of information submitted to this office are subject to section 2301.009, but stated "the request at issue deals with policy forms and endorsements under Insurance Code Chapter 2301[.]" The department additionally stated that "Form Filings under Insurance Code Chapter 2301, Subchapter A, are generally treated as public by [the department] under Insurance Code section 2301.009." However, you also noted that

“much of the information is marked as confidential and proprietary and may implicate the interests of third parties,” and that “other responsive information not marked as confidential was released.” Accordingly, based on your representations, we understand you to represent that section 2301.009 is applicable to the entirety of the submitted information either as form filings or supporting information, and that such information is expressly public subject only to the possible proprietary interests of third parties.

As noted above, you state you notified the interested third parties of the request and of their right to submit arguments to this office as to why their information should not be released. An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). We have received arguments submitted by 21st Century, Farmers, FIE, FTCMIC, FCMIC, Foremost, Texas Farmers, Old American, Republic, and Southern. As of the date of this ruling, we have not received comments from any of the remaining third parties. Further, although we received comments from an attorney for Home State, Home State notified this office it did not oppose release of the requested information. Southern argues some of its information is excepted from disclosure under section 552.110 of the Government Code. Additionally, 21st Century, Farmers, FIE, FTCMIC, FCMIC, Foremost, Texas Farmers, and Old American raise section 552.137 of the Government Code for portions of their information,² and the department has redacted some e-mail addresses from the submitted documents. We note that information that a statute specifically makes public may not be withheld from the public under any of the Act’s exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, although Southern specifically argues section 552.110(a) for its forms and endorsements in the submitted information, based on your representations, we find this information is open to the public under section 2301.009 of the Insurance Code. Therefore, Southern’s forms and endorsements may not be withheld under section 552.110 of the Government Code. Similarly, because we find on the basis of your representations that the remaining submitted information is also open to the public under section 2301.009, none of the remaining information may be withheld under section 552.137.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the

²Counsel for 21st Century, Farmers, FIE, FTCMIC, FCMIC, Foremost, and Texas Farmers, informed this office that these entities received from the department a sampling of documents to review in connection with the request, and that it appears the information at issue is open to public inspection. Although counsel also raises section 552.110(a) of the Government Code, counsel states that section 552.110 is only being raised “in the event that the documents provided to us do not reflect the entirety of the requested production and or the documents provided to us are not representative of the requested production” Accordingly, we understand 21st Century, Farmers, FIE, FTCMIC, FCMIC, Foremost, and Texas Farmers do not object to release of the submitted information on the basis of section 552.110.

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 the copyright law and the risk of a copyright infringement suit.

In summary, the department must release the submitted information in its entirety, but any information subject to copyright may only be released in accordance with copyright law.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 465217

Enc. Submitted documents

c: Requestor
(w/o enclosures)

All Third Parties
(w/o enclosures)

