



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Mr. Stanton Strickland
Associate Commissioner
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-16169

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# 467762 (ORR# 130164).

The Texas Department of Insurance (the "department") received a request for 2011 Viatical/Life Settlement Provider Annual Reports, with the exception of information submitted by Life Settlement Corporation d/b/a Peachtree Life Settlements. You state the department will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of a number of third parties. Accordingly, you state, and provide documentation showing, you notified CMG Surety, LLC ("CMG"); D3G, LLC ("D3G"); Eagil Life Settlements, LLC ("Eagil"); Life Settlement Solutions ("Life Settlement"); Lifetrust; and Wm. Page & Associates, Inc. ("Wm. Page") of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2012-07767A (2012). You do not indicate there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the department must rely on Open Records Letter No. 2012-07767A as a previous determination and withhold or release the identical information in accordance with that ruling. *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 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CMG, D3G, Eagil, Life Settlement, Lifetrust, or Wm. Page explaining why the submitted information should not be released. Therefore, we have no basis to conclude CMG, D3G, Eagil, Life Settlement, Lifetrust, or Wm. Page has a protected proprietary interest in the submitted information. *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 the submitted information on the basis of any proprietary interest CMG, D3G, Eagil, Life Settlement, Lifetrust, or Wm. Page may have in the information.

We note the submitted information contains e-mail addresses that are subject to section 552.137 of the Government Code.¹ Section 552.137 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 id.* § 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. As no further exceptions to disclosure have been raised, the department must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 467762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

National R Agents, Inc.
For CMG Surety, LLC
16055 Space Center Boulevard, Suite 235
Houston, Texas 77062-6212
(w/o enclosures)

Mr. Richard Mitchell
President
CMG Surety, LLC
1016 Collier Center Way, Suite 200
Naples, Florida 34110-8473
(w/o enclosures)

Mr. Ricky Sanchez
D3G, LLC
4455 Camp Bowie Boulevard, Suite 114, No. 51
Fort Worth, Texas 76107
(w/o enclosures)

Mr. Guy E. Runyon
President
Eagil Life Settlements, LLC
50 Tice Boulevard
Woodcliff Lake, New Jersey 07677
(w/o enclosures)

Ms. Karen Canoff
Life Settlement Solutions
9201 Spectrum Center Boulevard, Suite 105
San Diego, California 92123
(w/o enclosures)

Corporation Service Company
For Lifetrust
701 Brazos Street, Suite 1050
Austin, Texas 78701-3232
(w/o enclosures)

Mr. Brahim Joseph Kashou
President
Lifetrust
330 Madison Avenue, 9th Floor
New York City, New York 10017
(w/o enclosures)

Ms. Catherine Brown Fryer
For Wm. Page & Associates
816 Congress Avenue, Suite 1700
Austin, Texas 78701
(w/o enclosures)