



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2013

Mr. David F. Brown
For the Texas Windstorm Insurance Association
Ewell, Bickham & Brown, L.L.P.
111 Congress Avenue, Suite 400
Austin, Texas 78701

OR2013-07199

Dear Mr. Brown:

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# 485936 (TWIA ID Nos. 000020 and 000039).

The Texas Windstorm Insurance Association (the "association"), which you represent, received three requests for all billing records and expense reports submitted to the association by Alvarez & Marsal Insurance Advisory Services, L.L.C. ("AMIAS"); a summary of the charges related to the billing records and expense reports; all communications related to the billing records and expense reports; and all receipts, backup material, and other data related to the billing records and expense reports. You state the association is releasing some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of AMIAS. Accordingly, you have notified AMIAS of the request and of its right to submit arguments to this office as to why the requested 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 the circumstances). We have received comments from AMIAS. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant requests for information because it was created after the association received the requests for information. This ruling does not address the public availability of any information that is not responsive to the requests and the association is not required to release such information in response to this requests.

Next, AMIAS states portions of the submitted information were the subject of Open Records Letter No. 2013-01240 (2013), and this ruling should constitute a previous determination. *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). However, the date range at issue in Open Records Letter No. 2013-01240 is not encompassed by the present requests for information. Thus, the information at issue is not identical to the information at issue in Open Records Letter No. 2013-01240. Accordingly, we determine the association may not rely on Open Records Letter No. 2013-01240. We will consider the association's and AMIAS's remaining arguments against disclosure.

AMIAS asserts portions of the submitted information consists of commercial or financial information, the release of which would cause the company substantial competitive harm. Section 552.110(b) protects "[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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).

AMIAS argues release of the rates and the amount of time spent by the employees named in the submitted invoices would cause the company substantial competitive harm. Upon review, we conclude AMIAS has established the release of some of the information at issue, which we have marked, would cause the company substantial competitive injury. Therefore, the association must withhold the information we have marked under section 552.110(b) of the Government Code.

The association and AMIAS raise section 552.136 for portions of the remaining information. Section 552.136 of the Government Code states "[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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) ("defining access device"). This office has determined bank account and routing numbers are access device numbers for purposes of

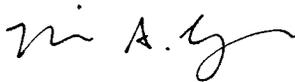
section 552.136. Accordingly, we find the association must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the association must withhold the information we have marked under section 552.110(b) of the Government Code and information we have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 485936

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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