



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2013

Mr. Nick Lealos  
Office of Agency Counsel  
Legal Section MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2013-17983

Dear Mr. Lealos:

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# 503504 (TDI# 141127).

The Texas Department of Insurance (the "department") received a request for correspondence and related materials between named insurance companies and the department, including correspondence related to specified forms. You state you will redact e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> 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 AXA Equitable Life Insurance Company ("AXA"), Hartford Life Insurance Company, ("Hartford"), Hartford Life and Annuity Insurance Company ("HLA"), MONY Life Insurance Company of America ("MONY"), and Union Central Life Insurance Company ("Union"). Accordingly, you state you notified AXA, Hartford, HLA, MONY, and Union of the request for information and of their right 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)

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<sup>1</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

(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, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the department received the request for information on July 19, 2013. You further state the department required the requestor to make a deposit for payment of anticipated costs pursuant to section 552.263 of the Government Code. *See id.* § 552.263(a) (governmental body may require deposit or bond for payment of anticipated costs in certain instances if governmental body provides requestor with written itemized statement). You inform us the department received a deposit for payment of the anticipated costs on August 7, 2013. Thus, August 7, 2013 is the date on which the department is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives deposit or bond). We note August 27, 2013 was a skeleton crew day for the department. This office does not count holidays, including skeleton crew days observed by a governmental body, for the purpose of calculating a governmental body's deadlines under the Act. Thus, the department's fifteen-business-day deadline was August 29, 2013. However, the department did not submit some of the responsive information until August 30, 2013. Therefore, the department failed to comply with the procedural requirements mandated by section 552.301(e) for this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and 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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, 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 a third party's interests can provide a compelling reason for non-disclosure, we will consider whether the submitted information is excepted under the Act.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from AXA, Hartford, HLA, MONY, and Union explaining why the submitted information should not be released. Therefore, we have no basis to conclude AXA, Hartford, HLA, MONY, or Union 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 AXA, Hartford, HLA, MONY, or Union may have in the information. As no exceptions to disclosure have been raised, the submitted 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 503504

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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