



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2014

Mr. Stanton Strickland
Senior Associate Commissioner
Legal Section - General Counsel Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1A
Austin, Texas 78714-9104

OR2014-02490

Dear Mr. Strickland:

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# 513674 (TDI No. 143329).

The Texas Department of Insurance (the "department") received a request for information pertaining to a named individual during a specified time period. You state the department will redact e-mail addresses of members of the public under section 552.137 of the Government Code.¹ Although you take no position as to whether the remaining submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Farmers New World Life Insurance Company ("Farmers"). Accordingly, you state, and provide documentation showing, you notified Farmers of the request for information and of its 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) (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 received comments from Farmers. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge the department failed to comply with section 552.301(b) of the Government Code in seeking an open records decision from this office. *See* Gov't Code

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten 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 decision.

§ 552.301(b). We note the department also failed to comply with its fifteen-business-day deadline under section 552.301(e) of the Government Code. *See id.* § 552.301(e). A governmental body's failure to comply with the procedural requirements of the Act 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third-party interests can provide a compelling reason for non-disclosure, we will consider whether any of the information at issue may be withheld on behalf of Farmers.

We note that Farmers has submitted comments to our office stating that it does not object to the release of the submitted information. Accordingly, the department may not withhold any portion of the information at issue on the basis of any proprietary interest that Farmers may have in it. As no exceptions to disclosure have been raised, the department must release the submitted information.

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, 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 513674

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)