



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2014

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

OR2014-05775

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# 521001 (TDI Request No. 147726).

The Texas Department of Insurance (the "department") received a request for a specified enforcement file. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, the department acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex.

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address your argument under this exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 36.252 of the Insurance Code reads as follows:

- (a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the department determines is relevant to further or complete an investigation.
- (b) Investigation files are not open records for purposes of [the Act], except as specified herein.

Ins. Code § 36.252. Section 36.251 of the Insurance Code states “investigation file”

means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

- (1) relevant to an investigation by the insurance fraud unit; and
- (2) subject to Section 701.151 [of the Insurance Code].

Id. § 36.251. You state the submitted information is part of a case file that pertains to a pending investigation by the department’s enforcement division. You indicate the submitted information is not relevant to an investigation by the department’s insurance fraud unit. Accordingly, based on your representations and our review, we find the submitted information is confidential under section 36.252 of the Insurance Code and the department must withhold it under section 552.101 of the Government Code on that ground until such time the department determines the submitted information is no longer relevant to further or complete its investigation.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 521001

Enc. Submitted documents

c: Requestor
(w/o enclosures)