



May 10, 1999

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR99-1264

Dear Ms. Keller:

You ask that we clarify whether the Texas Department of Insurance (the “department”) may rely on Open Records Decision No. 640 (1996) as a previous determination for purposes of section 552.301 of the Government Code. Your request was assigned ID# 123316.

Section 552.301 of the Government Code generally requires a governmental body that receives a written request for information that it wishes to withhold from required public disclosure and that it considers to be within one of the Public Information Act’s exceptions to disclosure to ask the attorney general to determine that the information at issue is excepted from disclosure. *See* Gov’t Code § 552.301(a). However, this requirement is suspended when there has been a “previous determination about whether the information falls within one of the exceptions.” *See id.* The attorney general must determine whether an open records ruling constitutes a “previous determination.” *See Houston Publ’g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989), Open Records Decision No. 435 (1986). When a request involves the precise information at issue in a prior open records ruling, a governmental body need not request another decision from the attorney general under section 552.301(a). Additionally, if requested information belongs to a specific, clearly delineated category of information and the attorney general has ruled that this category of information is excepted from required public disclosure, a governmental body need not request an attorney general decision. *See Rainbow Group, Ltd. v. Texas Employment Comm’n*, 87 S.W.2d 946 (Tex. App.—Austin 1995, writ denied). The home address of a peace officer is an example of a specific, clearly delineated category of information that is excepted from disclosure under section 552.117(2) of the Government Code. Therefore, a governmental body may rely on a prior decision regarding section 552.117(2) as a previous determination for purposes of section 552.301(a), because section 552.117(2) categorically makes confidential the home address of peace officers.

Open Records Decision No. 640, which involved a request for information concerning a named insurance company, construed two confidentiality provisions, sections 8 and 9 of article 1.15 of the Insurance Code. Whether the department may rely on Open Records Decision No. 640 as a previous determination depends on whether these provisions apply to a specific, clearly delineated category of information.

Insurance Code article 1.15 concerns the department's examination of carriers. Article 1.15A of the Insurance Code requires an insurance carrier to file with the department an annual audit of its financial condition conducted by an independent certified public accountant. Section 8 of article 1.15 requires the department to use in its examination of a carrier the carrier's audits and work papers, or if necessary, to conduct a separate audit of the carrier. Section 8(b) makes confidential "information obtained under section" 8, *i.e.*, the audit work papers of an insurance carrier's accountant or accounting firm or the carrier and records of communications between the accountant, the accounting firm and the carrier. Open Records Decision No. 640 concluded that this provision applies to any work papers obtained from independent auditors or the carrier under examination that relate to an audit conducted under section 9 of article 1.15A.

Section 9 of article 1.15 makes confidential "[a] final or preliminary examination report, and any information obtained during the course of an examination" unless the carrier is in liquidation or receivership. *Id.* § 9. Open Records Decision No. 640 concluded that this provision makes confidential information the department represents to be work papers related to examination reports concerning a carrier that was not in liquidation or receivership.

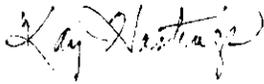
We believe these two confidentiality provisions apply to clearly delineated categories of information. In open records rulings that have considered the applicability of these two confidentiality provisions to requested information, this office has relied on the department's representations to this office that the information requested is within these sections' clearly delineated categories of information. We therefore conclude that the department may rely on Open Records Decision No. 640 to withhold information that belongs to the categories of information covered by these provisions and need not ask this office for an open records ruling.

Of course, the department may rely on Open Records Decision No. 640 as a previous determination as to the protection afforded to applicable information by sections 8(b) and 9 of article 1.15. For protection from required public disclosure based on grounds other than those addressed in that decision, the department must continue to submit the documents at issue to this office, timely raise any exceptions to disclosure and otherwise comply with sections 552.301 and 552.303 of the Government Code. Moreover, should the department submit documents to this office for an open records ruling, the department must assert all applicable grounds for withholding the documents from disclosure, including sections 8 and 9 of article 1.15 of the Insurance Code.

However, this letter does not waive or in any way limit the Attorney General's statutory obligation to enforce the Act. To fulfill this statutory obligation, the Attorney General reserves the right to review the department's use of this letter and the department's use of Open Records Decision No. 640. If the Attorney General determines that the department misapplied this letter or Open Records Decision No. 640 with respect to a particular document, then the Attorney General reserves the right to pursue an enforcement action against the department to compel release of that document. The Attorney General also reserves the right to revise or revoke this letter.

If you have questions about this letter, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Deputy Chief
Open Records Division

KHH/eaf

Ref.: ID# 123316