



August 1, 2001

Ms. Leigh Gonnet  
Staff Attorney  
Legal and Compliance, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2001-3346

Dear Ms. Gonnet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150146.

The Texas Department of Insurance (the "department") received a written request for various documents pertaining to Independent Reciprocal Exchange. You state that most of the requested records will be released to the requestor. You contend, however, that certain other documents are made confidential under article 21.49-1 of the Insurance Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 3 of article 21.49-1 provides that "[e]very insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner . . ." and further specifies the types of information to be provided to the department. You inform us that such information is provided to the department in a specified form known as "Form B." *See* 28 T.A.C. § 7.210. Section 10 of article 21.49-1 provides as follows:

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person . . . pursuant to Section 3, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person . . . without the prior

written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

You do not indicate that the commissioner has determined that the interests of policyholders or the public will be served by the publication of the requested Form B. Nor has the requestor provided the department with the required written consent from Independent Reciprocal Exchange. We therefore conclude that in this instance the department must withhold the requested Form B pursuant to section 552.101 of the Government Code in conjunction with section 10 of article 21.49-1 of the Insurance Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 150146

Enc. Submitted documents

c: Ms. Silvia Loya  
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(w/o enclosures)