



November 20, 2001

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2001-5379

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155122.

The Texas Department of Insurance (the "department") received two requests for information regarding mold claim data submitted by insurers in response to data calls and subpoenas issued by the department. You advise that you have released certain correspondence and a copy of a data call/subpoena to one requestor, and "certain aggregate data" to both requestors. You claim that the specific data calls and subpoenaed information are excepted from disclosure under section 552.101 of the Government Code in conjunction with chapters 36 and 38 of the Insurance Code. In addition, pursuant to section 552.305 of the Government Code, the department notified third parties of the request because their proprietary interests are implicated. This office received responses from each of the parties notified: Allstate Insurance Company ("Allstate"), Travelers Indemnity Company ("Travelers"), Farmers Insurance Exchange ("Farmers"), State Farm, and United Services Automobile Association and USAA Casualty Insurance Company ("USAA"). Allstate, Travelers, Farmers, State Farm, and USAA all argue that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exception you claim, the positions of the parties, and reviewed the submitted sample information.¹

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

As the data requested in the data call and the data requested in the subsequent subpoenas are identical, any exception that applies to exempt all information submitted in response to either the data call or the subpoena applies to all data submitted in response to both. The department claims that the subpoenaed information from the insurance groups is confidential under section 552.101 pursuant to section 36.158 of the Insurance Code. Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In this regard, we note that section 36.158(a) provides that

A record or other evidence acquired under a subpoena under this subchapter is not a public record for the period the commissioner considers reasonably necessary to

- (1) complete the investigation
- (2) protect the person being investigated from unwarranted injury; or
- (3) serve the public interest.

Ins. Code § 36.158(a).

You inform us that the commissioner has determined that the data provided in response to the subpoenas issued on August 24, 2001, should not be a public record in order to serve the public interest. Therefore, we conclude that the submitted information is confidential and must be withheld under section 552.101 in conjunction with section 36.158 of the Insurance Code. As section 552.101 is dispositive, we do not address the department's or third parties' other claimed exceptions.

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 155122

Enc. Submitted documents

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