



July 10, 2002

Ms. Mary Barrow Nichols
Senior Vice President and General Counsel
Texas Mutual Insurance Company
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR2002-3738

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165430.

The Texas Mutual Insurance Company (“Texas Mutual”) received a request for copies of its annual reports for the years 1994, 1995, 1996, 1997, 1998, and 2001. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 of the Government Code makes certain information expressly public. One such category of expressly public information under section 552.022 is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]” Gov’t Code § 552.022(a)(1). Thus, a governmental body must release a completed report unless the information is excepted under section 552.108 or is confidential by law. You claim that the submitted information is excepted from public disclosure under section 552.103. Our office has previously concluded that section 552.103 is a discretionary exception. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body’s position in litigation, and does not itself make information confidential). This exception does not “expressly [make] information confidential under other law.” Gov’t Code § 552.022. Therefore, you may not withhold the responsive annual reports under section 552.103. Because you do not raise another exception to public disclosure of this information, you must release the information under section 552.022(a)(1).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 165430

Enc: Submitted documents

c: Ms. Rachel Williams
2200 Phoenix Tower
3200 Southwest Freeway
Houston, Texas 77027
(w/o enclosures)