OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 16, 2002

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

OR2002-7175

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# 173685.

You inform this office that the Texas Mutual Insurance Company (the "company") received a written request for all information identifying the policyholders participating in the company's Start program. You state that the requestor also seeks information about the policies themselves, including classification codes, payroll by code, premium amounts, and experience modifiers. You contend that the requested information is excepted from required disclosure pursuant to sections 552.101 and 552.110 of the Government Code.

We first address a procedural matter. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "a copy of the written request for information." Gov't Code § 552.301(e)(1)(B). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

We did not receive a copy of the written request in your submission to this office. However, a demonstration that information is deemed confidential by law constitutes a"compelling" reason for withholding information from the public. *See* Open Records Decision No. 150 (1977) (demonstration that information is made confidential by statute or comes under protection of exception to disclosure intended to protect privacy interests constitutes compelling reason for non-disclosure). Because section 552.101 of the Government Code protects "information considered to be confidential by law," we will consider your section 552.101 claim.

You contend that the requested information is made confidential under section 2(d) of article 5.76-3 of the Insurance Code. Section 2(d) of article 5.76-3 provides:

> Except as otherwise provided by this subsection, the company is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the company's underwriting guidelines, and other information that would give advantage to competitors or bidders.

You inform us that the Start program

> is the Company's program for those businesses that do not qualify for the Company's voluntary market programs. Those accounts are examined each year, and depending on claims experience, compliance with loss prevention suggestions, and other underwriting factors, may be transferred to a voluntary program. The accounts may move between programs from year to year. The information sought by the requestor as to the Start program policyholders this year may in fact be competitive information about policyholders in the voluntary market in another year.

After reviewing your arguments and the documents at issue, we conclude that you have demonstrated that the release of the requested information would "give advantage to competitors or bidders" for purposes of section 2(d) of article 5.76-3. The company therefore may withhold the requested information pursuant to section 552.101 of the Government Code.[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

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[1]Because we resolve your request under section 2(d) of article 5.76-3, we need not address your other arguments for non-disclosure.

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).

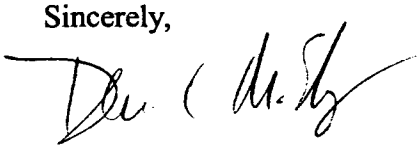
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/lmt

Ref: ID# 173685

Enc: Submitted documents

c: Mr. Todd Fagan
C/O Mary Barrow Nichols
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(w/o enclosures)