OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 15, 2003

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

OR2003-0311

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# 175024.

Texas Mutual Insurance Company ("TMI") received a request for information relating to a workers' compensation claim. You state that TMI intends to release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.[1]

Section 552.101 of the Government Code excepts from disclosure information made confidential by law, including information protected by other statutes. You assert that section 2(d) of article 5.76-3 of the Insurance Code operates in conjunction with section 552.101 to protect the submitted information from disclosure. Section 2(d) of article 5.76-3 provides:

> Except as otherwise provided by this subsection, [TMI] 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.

[1]This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes TMI to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D): Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Ins. Code art. 5.76-3, § 2(d). You state that TMI

> was designed as an insurance carrier to compete in the open insurance market, to act as a force in the industry to compel other voluntary market carriers to lower insurance rates, to serve as the insurer of last resort, and to encourage its insured businesses and their employees to structure a safe work environment. . . . TMI's internal documents reveal our claim adjusting methods. It is these methods that have allowed TMI to succeed as a stabilizing force in the worker's compensation market. It is very unlikely that other insurers would release information concerning their own adjustment methods. The release of TMI's internal documents relating to its adjusting procedures and to disputed claim issues would be the release of "information relating to claims, rates, the company's underwriting guidelines, and other information that would give advantage to competitors or bidders."

After reviewing the information at issue and TMI's arguments against disclosure, we agree that the submitted information is confidential under section 2(d) of article 5.76-3 of the Insurance Code and must therefore be withheld under section 552.101 of the Government Code.[2]

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

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[2]As we conclude that the submitted information is excepted from disclosure under section 552.101, we need not address your other claimed exceptions.

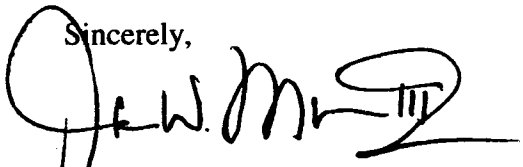
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 175024

Enc: Submitted documents

c: Mr. Michael A. Zimmerman
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(w/o enclosures)