



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

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

OR2003-3082

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# 180578.

The Texas Department of Insurance (the "department") received a written request for twenty categories of information regarding Farmer's New World Life Insurance Company ("Farmer's"). You state that the requestor "has agreed to take the information [the department] can provide in redacted form and has allowed [the department] to withhold some information." You further inform us, however, that the requestor informed the department that he also wishes to obtain certain "training material" contained in a closed litigation file. You do not contend that the training material is excepted from required public disclosure.

You state that in accordance with section 552.305(d), the department notified representatives of Farmer's of the records request and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). This office has received Farmer's response to your section 552.305 notification.¹ Although Farmer's representative contends that the training materials are not

¹This office has also received arguments from the requestor as to why the submitted materials should be released. *See* Gov't Code § 552.304.

responsive to the records request, the representative also indicates that Farmer's has no proprietary interest in the submitted materials. However, because the department has determined that the training materials in fact are responsive to the records request, and this office has not received any arguments from any third party that has a proprietary interest in the materials, we conclude that the department must release the training materials to the requestor in their entirety, with the following caveat.

We note that the submitted materials contain copyrighted information. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

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 Dep't of Pub. 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,


V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/seg

Ref: ID# 180578

Enc: Submitted documents

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