



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2003

Ms. Cynthia Villareal-Reyna
Section Chief, Agency Counsel Section
Legal and Compliance Division
Texas Department of Insurance
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OR2003-7399

Dear Ms. Villareal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189578.

The Texas Department of Insurance (the "department") received a request for the summary report of residential property insurance rates that the commissioner of insurance was required to submit to the Seventy-eighth Legislature pursuant to Senate Bill 310. The requestor also seeks copies of any reports or materials developed by the department in preparing its analysis of residential property insurance rates for the summary report. Finally, the requestor, who serves as legal counsel for State Farm Lloyds, also seeks any materials that relate to the department's analysis of the rates of State Farm Lloyds. You state that some of the requested information has been provided to the requestor. You claim, however, that the remainder of the information at issue is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.¹ You also indicate that release of data submitted to the department pursuant to Senate Bill 310 may implicate the proprietary interests of the insurance companies that submitted the data. Accordingly, you state, and provide documentation showing, that you notified fifty-five interested third parties of the present request and of their right to submit arguments to this office as to why the information

¹In your submission of August 20, 2003, you state the department wishes to withdraw its claim under section 552.107. Accordingly, we do not address section 552.107 of the Government Code in the present ruling.

should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered the exceptions claimed and have reviewed the submitted information.

As a preliminary matter, we note that you have not submitted the requested summary report to this office for our review. Furthermore, you do not contend that the summary report is excepted from disclosure pursuant to any of your claimed exceptions. We therefore assume that the department has released the summary report to the requestor. If not, you must release the summary report immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

With respect to the submitted information, you claim the requested reports or materials developed by the department in preparing its analysis of residential property insurance rates are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You indicate that the submitted information consists of internal department working papers that were developed to facilitate the department's analysis and comparison of data for the summary report contemplated in Senate Bill 310. You advise that the submitted documents address the management and analysis of department regulatory matters. You further assert that the initiation and resolution of a regulatory matter is a matter of policy, and you contend that the information in the submitted documents is reflective of the deliberative process by which the department's actuarials derived the information presented in the summary report. Upon review of your comments and the submitted information, we agree that release of the submitted information would reveal the policymaking processes of the department.

Accordingly, we determine that the department may withhold the submitted information pursuant to section 552.111 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 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

²Because we are able to make a determination under section 552.111 with respect to the submitted information in its entirety, we do not reach the additional arguments submitted by the department, or the arguments submitted by third parties concerning the disclosure of the information.

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,



David R. Saldivar
Assistant Attorney General
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DRS/seg

Ref: ID# 189578

Enc: Submitted documents

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