



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2005

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714

OR2005-05328

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#226308.

The Texas Department of Insurance (the "department") received a request for information related to a named agent for a specified time period. Although you make no arguments and take no position as to whether the requested information is excepted from disclosure, you indicate that this information may be subject to third party proprietary interests. You indicate that pursuant to section 552.305 of the Government Code, you notified interested third parties, International Financial Group ("International"), Law Offices of James L. Brister, P.L.L.C ("Brister"), and General American Life Insurance Company ("General American"), of the request and of their opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). General America provided this office with arguments against disclosure of some of the requested information. We have considered the submitted arguments and have reviewed the information you have submitted.

Initially, we note, and you acknowledge, that the department has not sought an open records decision from this office with regard to the submitted information within the ten-day

statutory deadline imposed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party proprietary interests are at issue, we will address the submitted arguments.

However, 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). As of the date of this letter, IFG and Brister have not submitted to this office any reasons explaining why their information should not be released. We thus have no basis for concluding that any portion of the submitted information relating to IFG and Brister constitutes proprietary information. *See, e.g.*, Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm). Therefore, the submitted information for IFG and Brister must be released.

We now turn to the arguments submitted on behalf of General American. General American argues that its information is excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Upon consideration of General American's arguments and review of the information at issue, we find that General America has made only conclusory allegations that release of the requested information would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support these allegations. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give

competitor unfair advantage on future contracts is too speculative). Accordingly, General America's information may not be withheld pursuant to section 552.110. The department must release all the submitted information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 226308

Enc. Submitted documents

c: Mr. Conrad Bodden
Cowen & Bodden
520 East Levee Street
Brownsville, Texas 78520
(w/o enclosures)

Mr. Thomas D. Leverett
International Financial Group
1606 North Alamo Street
San Antonio, Texas 78215
(w/o enclosures)

Mr. Stuart Simms
Law Offices of James L. Brister, P.L.L.C.
2117 Pat Booker Road, Suite A
Universal City, Texas 78148-3203
(w/o enclosures)

Mr. Carl Robert Henrikson
General American Life Insurance Company
700 Market Street
St. Louis, Missouri 63101
(w/o enclosures)

Mr. Lawrence A. Vranka
Metropolitan Life Insurance Company
27-01 Queens Plaza North, Area 5A
Long Island City, New York 11101
(w/o enclosures)