ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2005

Ms. Toni K. Toliver
Texas Mutual Insurance Company
Office of the General Counsel
6210 East Highway 290
Austin, Texas 78723-1098

OR2005-06044

Dear Ms. Toliver:

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# 227644.

The Texas Mutual Insurance Company (the "company") received a request for (1) records regarding payments to contractors for professional services during 2003 and 2004; and (2) executive officer and board member expense reimbursement records for 2003 and 2004. You state that you have provided the requestor with most of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses confidentiality provisions found in other statutes. You contend that the information at issue, which relates to payments made to private investment firms for professional services, 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.

Ins. Code art. 5.76-3 § 2(d). You state that the company's investments "are critical to its fulfilling its statutory mandates[,]" that the company "must carefully choose, and negotiate fees with, its investment firms in order to maintain its financial viability; [and that] investment earnings are material to the overall financial health of an insurer." You argue that the company's "financial program through the use of investments could be undermined by the release of payment information to it investment firms." You further contend that the company's competitors, which consist solely of private companies, could use the information at issue to enhance their own financial position in the marketplace at the expense of the company. After reviewing your arguments and the information at issue, we conclude that you have demonstrated that the release of this 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 information at issue 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 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

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[1] As our ruling is dispositive, we need not address your remaining arguments against disclosure.

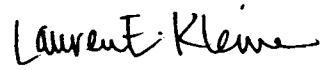
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 227644

Enc. Submitted documents

c: Mr. Kevin Krause
The Dallas Morning News
Denton County Bureau
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(w/o enclosures)