



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2006

Ms. Mimi Hastings Shelton  
Associate General Counsel  
Texas Mutual Insurance Company  
6210 East Highway 290  
Austin, Texas 78723-1098

OR2006-02759

Dear Ms. Shelton:

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# 245199.

The Texas Mutual Insurance Company (the "company") received two requests for information pertaining to the region on which the company bases its assessment of "usual, reasonable, or customary" charges and the date of that assessment.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the company's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the

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<sup>1</sup>You state that you sought clarification of the request for information. *See Gov't Code* § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this instance, the requests for information were received on November 16, 2005 and November 22, 2005, respectively. However, you did not request a ruling or submit the requested information for our review until January 13, 2006. Consequently, we find that the company failed to comply with the procedural requirements of section 552.301.

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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Section 552.104 is a discretionary exception intended to protect the interests of a governmental body, and as such may be waived by a governmental body. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Thus, section 552.104 does not provide a compelling reason to withhold the submitted information from disclosure. However, sections 552.101 and 552.110 are mandatory exceptions and constitute compelling reasons that overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will address your arguments under these exceptions to disclosure.

Section 552.101 of the Government Code 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 submitted information, which relates to the company's medical payment guidelines and utilization data, 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 argue that section 2(d) of article 5.76-3 protects the submitted information because the information concerns the company's methodology in determining which medical fees are "fair and reasonable." In support of your argument, you

state that the submitted information reveals the company's "average pricing of services, the severity of [the company's] claims, and [its] utilization review abilities." Furthermore, you argue that the company's competitors could use the submitted information to undercut the company's competitive position in the worker's compensation insurance marketplace. After reviewing your arguments and the submitted information, 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 submitted information pursuant to section 552.101 of the Government Code.<sup>2</sup>

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); *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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 Office of the Attorney General 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. 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 A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 245199

Enc. Submitted documents

c: Mr. Arthur Murphy  
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(w/o enclosures)