ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2006

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

OR2006-03071

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# 245282.

The Texas Mutual Insurance Company (the "company") received a request for a list of the company's policyholders.[1] You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted information.

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 requested information 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:

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[1]We note that the company sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

[2]Although the company also asserts section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it body believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

> 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 inform us that the submitted information consists of lists of the company's customers. You state that release of the submitted information "would give the requestor essentially a list of business prospects to raid from other agents." After reviewing your arguments and the documents at issue, we conclude that you have demonstrated that the release of the requested 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. As our ruling on this issue is dispositive, we need not reach your remaining arguments.

You also ask this office to issue a previous determination that would permit the company to withhold information relating its customer lists without the necessity of again requesting an attorney general decision under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time. 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

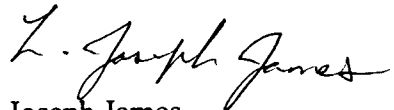
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/jh

Ref: ID# 245282

Enc. Submitted documents

c: Ms. Suzanne Watts
Prime Source Management
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(w/o enclosures)