



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2007

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2007-14253

Dear Ms. Waitt:

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# 293233.

The Department of Insurance (the "department") received a request for copies of the auto rate filings for seven specific companies. You state that the department has released to the requestor responsive information for five of the named companies. You claim that some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You also state that the submitted information may be excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.114 of the Government Code, but make no arguments in support of these exceptions. Further, you provide documentation showing that the department has notified Liberty County Mutual Insurance ("Liberty") and Nationwide Mutual Fire Insurance ("Nationwide") of the department's receipt of the request for information and of the right of each to submit arguments to this office as to why the information at issue 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 in certain circumstances).* We have reviewed the submitted information and considered all of the submitted arguments.

Initially, we note that the department states that chapter 2251 of the Insurance Code is applicable to the submitted auto rate filings. Section 107 of chapter 2251 of the Insurance

Code states that, “[e]ach filing made, and any supporting information filed, under this chapter is open to public inspection as of the date of the filing.”¹ Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, a filing made under chapter 2251 of the Insurance Code is public, and the Act’s exceptions do not apply. Accordingly, since the submitted auto rate filings are information made public by section 2251.107, no portion of them may be withheld under section 552.110 of the Government Code.

Next, we will address section 552.137 of the Government Code for the e-mail address in the cover letter and transmittal sheet which the department states are not part of the filings under chapter 2251 of the Insurance Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code § 552.137(a)-(c)*. The e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). Further, you state that the owner of the e-mail address did not affirmatively consent to the release of the e-mail address. ~~Therefore, the department~~ must withhold the marked e-mail addresses in the cover letter and transmittal sheet under section 552.137.

Finally, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990)*.

In summary, the department must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released in accordance with copyright law.

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

¹Act of May 25, 2005, 79th Leg., R.S., ch. 727, § 2, 2005 Tex. Sess. Law Serv. 2140 (Vernon) (to be codified as an amendment of Tex. Ins. Code Ann. § 2251.107.)

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 293233

Enc: Submitted documents

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