



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2008

Mr. W. David Floyd
General Counsel
Heartland Risk Management, LLC
5316 Highway 290 West, Suite 340
Austin, Texas 78735

OR2008-04841

Dear Mr. Floyd:

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# 307047.

The Texas Schools Property and Casualty Cooperative (the "cooperative"), which you represent, received a request for copies of its reinsurance policies for general liability, errors and omissions, and automobile liability. You claim that portions of the submitted reinsurance contract are excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the cooperative's obligations under the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative

samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Although the present request for information is dated August 10, 2006, you do not inform us when the cooperative actually received this request. Thus, the cooperative failed to comply with section 552.301(e)(3) by not providing a signed statement or sufficient evidence of when the request was received. Furthermore, you did not request a ruling from our office or submit the information at issue until February 4, 2008. Consequently, we find that the cooperative failed to comply with the requirements of both sections 552.301(b) and 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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 section 552.302); Open Records Decision No. 319 (1982). Generally, 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 section 552.110 can provide a compelling reason to withhold information under the Act, we will address your argument under this section.

You claim that the pricing information contained within the submitted reinsurance contract is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 provides as follows:

- (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of section 552.021.
- (b) Commercial 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 is excepted from the requirements of Section 552.021.

Gov't Code § 552.110(a), (b). By its terms, section 552.110 only protects the interests of a private entity or person from whom information is obtained. *Id.* This provision does not protect the interests of a governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. In this instance, the information at issue consists of a reinsurance contract between the cooperative and Evanston Insurance Company, a private third party. You argue that section 552.110 applies to this contract because the cooperative is managed by another private third party, Heartland Risk Management ("HRM"), and that release of this cooperative contract necessarily implicates the proprietary interests of HRM. Upon review of all of your

arguments and the documents at issue, we find that, regardless of the cooperative's management relationship with HRM, the information you seek to withhold is the cooperative's own pricing information. Accordingly, we rule that the cooperative may not withhold any portion of its own reinsurance contract under section 552.110 of the Government Code. As you raise no further exceptions to disclosure, the contract must be released to the requestor in its entirety.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 307047

Enc. Submitted documents

c: Mr. William M. "Skip" King
King & Hardesty
1411 West Avenue, Suite 100
Austin, Texas 78701
(w/o enclosures)