



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2008

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

OR2008-08385

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# 311849.

The Texas Department of Insurance (the "department") received a request for information regarding a specified filing. You state that some of the requested information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. Although you take no position with respect to the public availability of the rest of the submitted information, you believe that its release may implicate the proprietary interests of Liberty Mutual. Accordingly, you have notified Liberty Mutual of the request and of its opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of an exception to disclosure in certain circumstances). We have received correspondence from counsel for Liberty Mutual urging us to withhold the submitted information under section 552.110 of the Government Code. We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note that the department in its brief to this office raised section 2251.107 of the Insurance Code in connection with the request for information. 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.” Ins. Code § 2251.107. Pursuant to section 552.303 of the Government Code, our office requested clarification from the department as to whether section 2251.107 applies to the requested information. *See* Gov’t Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). In correspondence to our office, the department responded that the requested filing, “was processed as a rate filing because it listed an ‘Overall Rate Impact.’” The department further stated that, “[t]he rate filing, and all its supporting documentation...pertain to private passenger automobile lines of insurance,” and “[t]herefore, section 2251.107 applies to the submitted documents.” 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 information, and the Act’s exceptions do not apply. Accordingly, because the submitted rate filings and supporting documentation are information made public by section 2251.107 of the Insurance Code, no portion of them may be withheld under section 552.110 or section 552.137 of the Government Code, and they must be released to the requestor.

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). If the governmental body does not file suit over 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 311849

Enc. Submitted documents

c: Ms. Heather McGuigan
Inventory Manager
Quadrant Information Services
770 Trademark Drive, Suite 100
Reno, Nevada 89521
(w/o enclosures)

Mr. Edward J. McGowan, CPCU
Counsel
Liberty Mutual
15A Christopher Way
Eatontown, New Jersey 07724
(w/o enclosures)