



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2009

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

OR2009-01710

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# 334178 (TDI# 81908).

The Texas Department of Insurance (the "department") received a request for information pertaining to a specified department enforcement file.<sup>1</sup> You state some information will be released to the requestor. Although you take no position with regards to the submitted enforcement file, you state that release of this file could implicate the proprietary interests of the following third parties: General American Life Insurance Company, ING Life Insurance and Annuity Company, Metropolitan Life Insurance Company, Life Insurance Company of the Southwest, American General Life and Accident Insurance Company, AXA Equitable Life Insurance Company, and MONY Life Insurance Company. Accordingly, you state, and provide documentation showing, that you notified these third parties of the department's receipt of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party

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<sup>1</sup>You indicate that the department sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and arguments.

Initially, we note that the requestor excluded life insurance applications and accompanying medical information pertaining to individual insureds from the present request. Thus, these items are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request.

Next, you acknowledge, and we agree, that the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, you assert that third party interests are possibly at stake. We will therefore consider any comments received from the notified third parties.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only Life Insurance Company of the Southwest ("LSW") has submitted to this office reasons explaining why its information should not be released.<sup>2</sup> We thus have no basis for concluding that any portion of the remaining third parties' records constitutes proprietary information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the department may not withhold these companies' records on the basis of any proprietary interest they may have in them.

LSW claims that its customer list is excepted from disclosure under section 552.110(b) of the Government Code, which excepts from disclosure "[c]ommercial or financial information

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<sup>2</sup>We note that AXA Equitable Life Insurance Company and MONY Life Insurance Company informed this office that they do not object to release of their 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.” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). After reviewing the arguments and the submitted information, we find that release of the marked LSW customer list would result in significant competitive harm to LSW’s interests for purposes of section 552.110(b). Therefore, the department must withhold the information we marked under section 552.110(b) of the Government Code.

We note the remaining documents contain Texas-issued driver’s license and motor vehicle registration information.<sup>3</sup> Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). Therefore, the department must withhold the Texas-issued driver’s license and motor vehicle registration information we marked under section 552.130.

Some of the remaining information is also excepted under section 552.136 of the Government Code. Section 552.136(b) provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The remaining documents contain numerous insurance policy numbers, as well as numerous banking account and routing numbers that are confidential under section 552.136. Accordingly, we have marked representative samples of the information the department must withhold pursuant to section 552.136 of the Government Code.

The remaining documents also contain e-mail addresses. 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). We have marked personal e-mail addresses within the remaining documents that must be withheld under section 552.137, unless the owners of these e-mail addresses consent to their release.

Finally, we note that some of the remaining information appears to 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).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

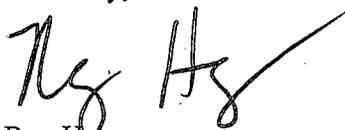
A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, 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 information we marked under section 552.110(b) of the Government Code, as well as the information we marked under section 552.130 of the Government Code. We have marked representative samples of information the department must withhold pursuant to section 552.136 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of these addresses consent to their release. The remaining responsive information must be released, but any copyrighted information must be released in accordance with copyright law.<sup>4</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

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<sup>4</sup>We note that the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147.

Ref: ID# 334178

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: ING Life Insurance Company  
CT Corporation System  
350 North St. Paul Street  
Dallas, Texas 75201  
(w/o enclosures)

Metropolitan Life Insurance Company  
CT Corporation System  
350 North St. Paul Street  
Dallas, Texas 75201  
(w/o enclosures)

National Life Group  
Robert S. Burke  
One National Life Drive  
Montpelier, Vermont 05604  
(w/o enclosures)

MONY Life Insurance Company  
Paula Anderson  
12377 Merit Drive, Suite 1500  
Dallas, Texas 75251-2240  
(w/o enclosures)

American General Life and Accident Insurance Company  
Corporation Service Company  
701 Brazos, Suite 1050  
Austin, Texas 78701-3232  
(w/o enclosures)

AXA Equitable Life Insurance Company  
Paula Anderson  
12377 Merit Drive, Suite 1500  
Dallas, Texas 75251-2240  
(w/o enclosures)

General American Life Insurance Company  
Joseph Briscoe  
P.O. Box 396  
St. Louis, Missouri 63166  
(w/o enclosures)

Life Insurance Company of the Southwest  
Wade H. Mayo  
1300 W. Mockingbird Lane  
Dallas, Texas 75247-4976  
(w/o enclosures)