



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2009

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

OR2009-05560

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# 340960 (TDI Request No. 87960).

The Texas Department of Insurance (the "department") received a request for specified filings for Progressive County Mutual Insurance Company ("Progressive"). You state you have released some of the requested information to the requestor. We understand you to claim section 552.137 of the Government Code for a portion of the submitted information.<sup>1</sup> You also state that releasing a portion of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation demonstrating, that the department has notified Progressive of the request and of its opportunity 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); 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 the exception to disclosure in certain circumstances).* A representative of Progressive has submitted comments to our office. ~~We have considered the submitted arguments and reviewed the submitted information.~~

Initially, you state that link numbers 88175 and 88178 were ruled upon in Open Records Letter No. 2007-05121 (2007). In that ruling, we ruled that the department must withhold the Progressive rate filings at issue in that decision pursuant to section 552.110 of the Government Code. We note, however, that the relevant law has changed since the issuance of that previous ruling. Section 2251 of the Insurance Code, which addresses filings made

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<sup>1</sup>Although you do not raise section 552.137 of the Government Code in your brief to this office, you appear to have marked a portion of the submitted information under this exception. Therefore, we understand you to raise section 552.137 for a portion of the submitted information you have marked.

under chapter 2251 of the Insurance Code took effect on April 1, 2007.<sup>2</sup> Thus, because the law affecting the information at issue has changed, the department may not rely upon our previous ruling as a previous determination, and we will address the submitted arguments for the submitted information.

Next, we note that the department, in its brief to this office, raises chapter 2251 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. The department states that the filings at issue were processed as private passenger automobile rate filings. Thus, based on the department’s representations, we find that section 2251.107 applies to the submitted rate filing information. Although we understand Progressive to contend that the submitted information is excepted from disclosure under section 552.110 of the Government Code, information that a statute specifically makes public may not be withheld from the public under any of the Act’s exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, because a filing made under chapter 2251 of the Insurance Code is made public by section 2251.107, none of the submitted information may be withheld under sections 552.110 or 552.137 of the Government Code. As no other exceptions are raised, the department must release the submitted information in its entirety.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eeg

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<sup>2</sup>See Ins. Code § 2251; Act of May 24, 2005, 79<sup>th</sup> Leg., R.S., ch. 727 § 20, 2005 Tex. Sess. Law Serv. 2189.

Ref: ID# 340960

Enc. Submitted documents

c: Requestor  
(w/o enclosures)