



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief
Agency Counsel Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2009-10301

Dear Ms. Villareal-Reyna:

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# 350116 (TDI# 91224).

The Texas Department of Insurance (the "department") received a request for information relating to the workers' compensation insurance for a specified company.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by an attorney for the National Council on Compensation Insurance ("NCCI"). See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.136 of the Government Code states 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." *Id.*

¹You inform us that the department sought and received clarification of the information requested. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

§ 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). You seek to withhold the insurance policy numbers you have marked in the submitted documents under section 552.136. NCCI claims the submitted insurance policy numbers are not access device numbers for the purpose of section 552.136 of the Government Code. However, this office has consistently concluded that insurance policy numbers must be withheld under section 552.136 of the Government Code. Further, this office has determined that insurance policy numbers are numbers that alone or in conjunction with another device may be used to obtain money, goods, or services, or another thing of value and thus constitute access device numbers as defined under section 552.136 of the Government Code. Accordingly, we conclude the department must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.²

Finally, we note, and you acknowledge, that some of the remaining information is 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. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See 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 you have marked under section 552.136 of the Government Code. The department must release the remainder of the submitted information, but must comply with copyright law in doing so.

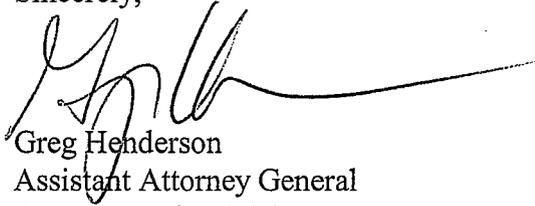
You also ask this office to issue a previous determination permitting the department to withhold this type of information under section 552.136 of the Government Code without requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time.

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.

²You also request that this office rule on the issue of whether insurance policy numbers may be posted on the department's internet-based coverage verification system for worker's compensation insurance. We do not address this request except to note this type of inquiry is outside the scope of the ruling process under the Act. *See* Gov't Code ch. 552 (discussing, among other things, the attorney general's role in the open records ruling process).

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, 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,

A handwritten signature in black ink, appearing to read 'GH', with a long horizontal flourish extending to the right.

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#350116

Enc. Submitted documents

c: Requestor
(w/o enclosures)