



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief
Agency Counsel Section
Legal & Regulatory Affairs Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-13610

Dear Ms. Villarreal-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# 356562 (TDI# 93521).

The Texas Department of Insurance (the "department") received a request for any information, including a "negative certification," regarding a named entity. You state the department has withheld some of the responsive information under section 552.101 of the Government Code in conjunction with section 701.151 of the Insurance Code pursuant to a previous determination issued to the department in Open Records Letter No. 2005-05223 (2005). *See* Open Records Letter No. 2005-05223 (2005) (information acquired by the department that is relevant to an inquiry by the insurance fraud unit and that the commissioner deems confidential is excepted under section 552.101 of the Government Code in conjunction with section 701.151 of the Insurance Code); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim the submitted investigation file is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. This section encompasses information protected by other statutes, such as section 36.252 of the Insurance Code, which provides:

- (a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the department determines is relevant to further or complete an investigation.
- (b) Investigation files are not open records for purposes of [the Act], except as specified herein.

Act of June 3, 2009, 81st Leg., R.S., ch. 1039, §1, 2009 Tex. Sess. Law Serv. 2668, 2668 (Vernon) (to be codified at Ins. Code § 36.252). Section 36.251 of the Insurance Code states “investigation file”

means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

- (1) relevant to an investigation by the insurance fraud unit; and
- (2) subject to Section 701.151 [of the Insurance Code].

Act of June 3, 2009, 81st Leg., R.S., ch. 1039, §1, 2009 Tex. Sess. Law Serv. 2668, 2668 (Vernon) (to be codified at Ins. Code § 36.251). You state the submitted information is the department’s investigation file pertaining to an investigation of the entity named in the request. You also state the investigation is pending and the submitted information is relevant to the investigation. You further state the investigation is being conducted by the department’s enforcement division, and indicate the information is not relevant to an investigation by the insurance fraud unit. Based on your representations and our review, we find the submitted investigation file is confidential under section 36.252 of the Insurance Code and must be withheld under section 552.101 of the Government Code, until such time that the department determines the information is no longer relevant to further or complete its investigation. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 356562

Enc. Submitted documents

c: Requestor
(w/o enclosures)