



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

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

OR2009-14803

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# 359534 (TDI# 94819).

The Texas Department of Insurance (the "department") received a request for records relating to any complaints made by three named lenders against two specific entities. You state that some of the requested information will be withheld pursuant to the previous determination issued to the department in Open Records Letter No. 1999-1264 (1999) (information is confidential that the department represents to be work papers related to examination reports concerning a carrier that is not in liquidation or receivership). *See* Open Records Decision No. 640 at 4 (1996) (department must withhold any information obtained from audit "work papers" that are "pertinent to the accountant's examination of the financial statements of an insurer" under previous version of section 401.058 of the Insurance Code). You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. You also state the information may implicate the proprietary interests of Juan C. Queme, Wells Fargo, Houston Mortgage and Real Estate Equities, Inc., Canonball Enterprises, Inc., Greg Sanders, and Lehman Bros. Bank. You state, and provide documentation showing, you have notified these third parties of the request and of their opportunity to submit comments to this office as to why the information at issue should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305

permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). 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.

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].

Ins. Code § 36.251. You state the submitted information consists of three pending case files pertaining to an investigation of an entity named in the request. 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 files are 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,

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 359534

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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