



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2010

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

OR2010-01022

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# 367899 (TDI # 97610).

The Texas Department of Insurance (the "department") received a request for comments and opinions submitted by specified companies in relation to the Hurricane Ike Mediation Program.¹ You state the department has released some of the requested information to the requestor. Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of Texas Farm Bureau Insurance Company ("Farm Bureau") and State Farm Companies ("State Farm"). Accordingly, you state, and have provided documentation showing, you notified Farm Bureau and State Farm of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹You inform us, and provide documentation showing, that the department contacted the requestor who clarified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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

Initially, you inform us that the requestor clarified her request to allow the commission to redact personal e-mail addresses subject to section 552.137 of the Government Code. Accordingly, any such information is not responsive to the request and need not be released to the requestor.

We have received comments from Farm Bureau stating that, with the exception of its direct line telephone number, it does not object to the release of its responsive information. However, Farm Bureau has not directed our attention to any law, nor are we aware of any law, that makes the submitted phone number confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Additionally, we note that information is not confidential under the Act simply because the party that submitted the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Therefore, unless the information at issue falls within an exception to disclosure, it must be released.

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 information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from State Farm explaining why the submitted information should not be released. Therefore, we have no basis to conclude State Farm has protected proprietary interests in the submitted information. *See id.* § 552.110; 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. Accordingly, the department may not withhold the responsive information on the basis of any proprietary interest State Farm may have in the information. As no exceptions to disclosure have been raised, the responsive information must be released to the requestor.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 367899

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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