



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2011

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal & Regulatory Affairs Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-06014

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# 416219 (TDI Nos. 112808 and 112930).

The Texas Department of Insurance (the "department") received two requests for all documents related to a specified investigation. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the requests were received. This ruling does not address the public availability of non-responsive information, and the department is not required to release such information in response to the requests.

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].

Id. § 36.251. You state, and provide a supplemental affidavit stating, the submitted information consists of a case file pertaining to pending investigations by the department’s enforcement division. You do not indicate the submitted information is relevant to an investigation by the insurance fraud unit. Accordingly, based on your representations and our review, we conclude the submitted information is confidential under section 36.252 of the Insurance Code and must be withheld on that basis under section 552.101 of the Government Code until such time as the department determines the submitted information is no longer relevant to further or complete its investigations.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 416219

Enc. Submitted documents

cc: Requestor
(w/o enclosures)