



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Mr. Nick Lealos
Office of Agency Counsel
Legal Section MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-00946

Dear Mr. Lealos:

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# 476252 (TDI # 132891).

The Texas Department of Insurance (the "department") received a request for the 2010 and 2011 Viatical/Life Settlement Provider Annual Data Reports. You state some information will be released to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Caldwell Funding Corporation; Credit Suisse Life Settlements, L.L.C.; Financial Life Services, L.L.C.; Institutional Life Services, L.L.C.; J Chapman & Associates, L.L.C.; Life Settlement Corporation; Milestone Life Settlement Fund, L.L.C.; and Proverian Capital, L.L.C. (collectively, the "third parties") of the request for information and of their rights 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have reviewed the submitted information.

Initially, we note the department seeks to withdraw its present request for an open records decision because the department asserts the requestor's public information request was withdrawn by operation of law for failure to timely respond to a cost estimate for providing requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615 of the Government Code because it did not inform the requestor that inspection is an available less costly method of obtaining the requested

information. *See* Gov't Code § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law.

Next, you state most of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-07767A (2012) and 2012-17087 (2012). You do not indicate there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the department must rely on Open Records Letter Nos. 2012-07767A and 2012-17087 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note 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. Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties. Therefore, we have no basis to conclude any of the third parties have 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 submitted information on the basis of any proprietary interest the third parties may have in the information.

We note the submitted information contains e-mail addresses subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. *See id.* § 552.137(b). As no further exceptions to disclosure have been raised, the remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 476252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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