



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

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

OR2014-00209

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# 510034 (TDI # 143850).

The Texas Department of Insurance (the "department") received a request for the underwriting guidelines for a specified insurance company's residential property policy. Although you take no position regarding the release of the submitted information, you state release of the submitted information may implicate the proprietary interests of Acceptance Casualty Insurance Company ("Acceptance"). Accordingly, you state, and have provided documentation showing, you notified Acceptance of the request and of its 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 to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments on behalf of Acceptance. We have considered the submitted arguments and reviewed the submitted information.

Acceptance claims its submitted information is confidential under section 38.002 of the Insurance Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Section 38.002 of the Insurance Code relates to underwriting guidelines for personal automobile and residential property insurance, and provides in part:

(b) Each insurer shall file with the department a copy of the insurer's underwriting guidelines. The insurer shall update its filing each time the underwriting guidelines are changed. If a group of insurers file one set of underwriting guidelines for the group, they shall identify which underwriting guidelines apply to each company in the group.

...

(d) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

...

(f) The underwriting guidelines are subject to Chapter 552, Government Code.

Ins. Code § 38.002(b), (d), (f). Acceptance states its submitted residential property insurance underwriting guidelines are subject to section 38.002. Section 38.002 of the Insurance Code is made specifically applicable to the underwriting guidelines of an insurance company engaged in the business of residential property insurance in this state. *See* Ins. Code § 38.002(a)(1) (defining "insurer" for purposes of Ins. Code § 38.002). Acceptance asserts that release of its information would violate section 38.002(d).

Statutory confidentiality under section 552.101 requires express language that makes certain information confidential or states that information shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987). Thus, for the purposes of section 552.101, a statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from a statutory structure. *See* Open Records Decision No. 658 at 4 (1998). Section 38.002 of the Insurance Code does not expressly provide for the confidentiality of the requested underwriting guidelines or any other information. *Compare* Ins. Code § 38.002(d) ("The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.") *with id.* § 38.003(d) ("Underwriting guidelines are confidential, and the department or the office of public insurance counsel may not make the guidelines available to the public.").¹ Furthermore, Acceptance's underwriting guidelines are not themselves implicitly confidential, for the purposes of section 552.101, merely because section 38.002(d) provides for the release of a de-identified summary of the guidelines. *See* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because statute designates other specific information as public information). Therefore, having considered Acceptance's

¹We note that section 38.003 "applies to all underwriting guidelines that are not subject to Section 38.002." Ins. Code § 38.003(a).

arguments, we conclude that the department may not withhold any of Acceptance's information under section 552.101 of the Government Code in conjunction with section 38.002 of the Insurance Code. As no further exceptions to disclosure have been raised, the department must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 510034

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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