



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2014

Mr. Stanton Strickland  
Senior Associate Commissioner  
Legal Section - General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2014-08539

Dear Mr. Strickland:

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# 521579 (TDI Request No. 148082).

The Texas Department of Insurance (the "department") received a request for a copy of the Form A - Acquisition Statement (the "statement") concerning the acquisition of Fireman's Fund County Mutual Insurance Company by Geico County Mutual Insurance Company ("Geico"). You state you have released certain information 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 Geico.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified Geico of the request for information 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) (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 received comments from Geico. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note that although the department discussed section 832.011 of the Insurance Code in response to our inquiry pursuant to section 552.303 of the Government Code, it did not specifically argue that this provision makes the information at issue confidential.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note the requestor asserts the submitted information is subject to section 823.154(c) of the Insurance Code. Pursuant to section 552.303(c) of the Government Code, this office asked the department to provide us with additional information regarding the applicability of that section. *See id.* § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). Specifically, this office asked the department whether any of the submitted information falls under section 823.154(c) of the Insurance Code, and to provide this office with a detailed explanation as to which types of information submitted to this office are, or are not, subject to section 823.154(c). Section 823.154 is part of subchapter D of chapter 823 of the Insurance Code, entitled "Control of Domestic Insurer; Acquisition or Merger," and requires, at section 823.154(a), that

(a) Before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer:

(1) the acquiring person shall file with the commissioner a statement that satisfies the requirements of Subchapter E;

(2) the acquisition or divestiture of control must be approved by the commissioner in accordance with this subchapter; and

(3) if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule.

Ins. Code § 823.154(a). Subchapter E of chapter 823 of the Insurance Code describes the information required to be included in a statement required under section 823.154(a).<sup>3</sup> *See id.* §§ 823.201-206. Section 823.154(c) states "[a] statement or notice filed under this section . . . is subject to public inspection at the office of the commissioner." *Id.* § 823.154(c).

In response to our office's request for additional information, the department did not specifically identify which types of information submitted to this office are subject to

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<sup>3</sup>We understand the "statement" required to be filed under section 823.154(a) is known as "Form A". *See* 28 T.A.C. § 7.209.

section 823.154(c), but stated "Geico filed the information at issue with its Form A as exhibits to the statement" and "*some* of these exhibits provided more information than required under subchapter E" (emphasis added). The department further explained that certain affiliate agreements are not required as part of the statement under subchapter E because "Form A merely required Geico to note the intended agreements" and "although copies of the actual proposed agreements were not required at the time when the Form A was filed, they were submitted for informational purposes." Accordingly, based on the foregoing, we understand you to represent that the agreements submitted for informational purposes are not part of Form A.

We note the requestor only seeks a copy of Form A. Accordingly, as the agreements at issue are not considered to be part of Form A, we find these agreements are not responsive to the instant request.<sup>4</sup> However, you do not specifically identify any of the remaining submitted information as information not required to be filed as part of Form A. Accordingly, to the extent the department determines any of the remaining submitted information is not required to be filed as part of Form A, that information is also not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request. However, to the extent the department determines the remaining information is required to be filed as part of Form A, we understand you to represent that section 823.154(c) is applicable to that information, and that such information is public information, subject only to the possible proprietary interests of third parties. To the extent the remaining information is required to be filed as part of Form A, we will thus address Geico's arguments against its disclosure.

Geico argues some of its remaining submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, and sections 552.110, 552.137, and 552.147 of the Government Code.<sup>5</sup> As previously noted, section 823.154(c) states "[a] statement or notice filed under this section . . . is subject to public inspection at the office of the commissioner." *Id.* § 823.154(c). We conclude this provision makes Form A expressly public.<sup>6</sup> We note that information that a statute specifically makes public generally may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Further, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts common-law.

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<sup>4</sup>As our determination that this information is not responsive to the request is dispositive, we need not address the arguments against disclosure of this information.

<sup>5</sup>Although Geico also raises section 552.101 of the Government Code in conjunction with constitutional privacy, Geico has not provided any arguments explaining how this doctrine is applicable to the submitted information. Therefore, we assume Geico no longer asserts this doctrine. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

<sup>6</sup>In support, we note you inform us that "[t]he department released to the requestor the Form A proper (43 pages) filed by GEICO, and a copy of the Assignment Agreement relative to the acquisition[.]"

*See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.-Fort Worth 2009, no pet.) (statutory provision controls and preempts common-law only when the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, none of the remaining submitted information may be withheld under section 552.101 in conjunction with common-law privacy or section 552.110, 552.137, or 552.147 of the Government Code. Accordingly, to the extent the remaining information is required to be filed as part of Form A and is therefore responsive to the request, it 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/tch

Ref: ID# 521579

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Bruce McCandless III  
Counsel for Government Employees Insurance Company  
Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
106 East Sixth Street, Suite 300  
Austin, Texas 78701-3661  
(w/o enclosures)