



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2014

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

OR2014-16508

Dear Mr. Harris:

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# 536361 (TDI# 152255 and 152433).

The Texas Department of Insurance (the "department") received two requests for a copy of the Form A - Acquisition Statement (the "statement") and information pertaining to the acquisition of Puritan Life Insurance Company of America by Verde Capital Partners. You state the department will release some information to the requestors. You claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Although you take no position with regard to the remaining information, you state release of this information may implicate the proprietary interests of Puritan Life Insurance Company of America ("Puritan") and Verde Capital Partners, LLC ("Verde"). Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of their right to submit arguments to this office as to why the information at issue 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 on behalf of Verde. We have reviewed the submitted arguments and submitted information.

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 Puritan explaining why the information at issue should not be released. Therefore, we have no basis to conclude Puritan has a protected proprietary interest in the information at issue. *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 any of the submitted information on the basis of any proprietary interest Puritan may have in the information.

We note Verde seeks to withhold information not submitted to this office by the department. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the department, this ruling does not address this information and is limited to the information submitted as responsive by the department.

Next, we note some of the requested information is subject to section 823.154(c) of the Insurance Code. Section 823.154 is part of subchapter D of chapter 823 of the Insurance Code, entitled "Control of Domestic Insurer; Acquisition or Merger." Section 823.154(a) provides 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>1</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). The department does not specifically identify which types of information submitted to this office are subject to section 823.154(c), but states “the documents at issue in [these requests] are Form A documents that the acquiring company attached as exhibits to the statement” and “*some* of the company exhibits provided more information for the department’s consideration” (emphasis added). The department informs us “assuming the department approved the acquisition filing under review. . . the acquiring company would be required to file additional documents, such as proposed affiliate agreements under Insurance Code Chapter 823, Subchapter C.” Accordingly, based on the foregoing, we understand you to represent the information submitted to the department for informational purposes is not part of Form A.

However, you do not specifically identify any of the submitted information as information not required to be filed as part of Form A. Accordingly, to the extent the department determines any of the submitted information is not required to be filed as part of Form A, we will consider the remaining arguments for this information. To the extent the department determines the submitted information is required to be filed as part of Form A, we understand you to represent section 823.154(c) is applicable to that information, and such information is public information, subject only to the possible proprietary interests of third parties. To the extent the submitted information is required to be filed as part of Form A, we will thus address Verde’s arguments against its disclosure.

Verde argues its submitted information is excepted from disclosure under sections 552.101, 552.102, 552.110, and 552.147 of the Government Code. 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.” Ins. Code § 823.154(c). We conclude this provision makes Form A expressly public. We note 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. *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*

---

<sup>1</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.

*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 information required to be filed as part of Form A may be withheld under section 552.101 in conjunction with common-law privacy or section 552.102, 552.110, or 552.147 of the Government Code.

Verde also argues the its information fits the definition of a trade secret found in section 134A.002(6) of the Civil Practice and Remedies Code of the Texas Uniform Trade Secrets Act (the “TUTSA”) as added by the Eighty-third Texas Legislature. 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 made confidential by other statutes. Section 134A.002(6) provides:

(6) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Civ. Prac. & Rem. Code § 134A.002(6). We note the legislative history of TUTSA indicates it was enacted to provide a framework for litigating trade secret issues and provide injunctive relief or damages in uniformity with other states. Senate Research Center, Bill Analysis, S.B. 953, 83rd Leg., R.S. (2013) (enrolled version). Section 134A.002(6)’s definition of trade secret expressly applies to chapter 134A only, not the Act, and does not expressly make any information confidential. *See* Civ. Prac. & Rem. Code § 134A.002(6); *see also id.* § 134A.007(d) (TUTSA does not affect disclosure of public information by governmental body under the Act). *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the department may not withhold Verde’s information under section 552.101 of the Government Code in conjunction with section 134A.002(6) of Texas Civil Practice and Remedies Code. Accordingly, to the extent the submitted information is required to be filed as part of Form A, it must be released to the requestor.

Section 552.101 of the Government Code encompasses section 823.011 of the Insurance Code. Section 823.011 states, in relevant part, the following:

(a) This section applies only to information, including documents and copies of documents, that is:

(1) reported or otherwise provided under Subchapter B or C [of Chapter 823 of the Insurance Code] or Section 823.201(d) or (e)[.]

...

(b) The information shall be confidential and privileged for all purposes. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected affiliates notice and an opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

...

(f) Information described by Subsection (a), including information in the possession of the National Association of Insurance Commissioners under this section, is confidential and privileged for all purposes, including for purposes of:

(1) Chapter 552, Government Code[.]

Ins. Code § 823.011(a)(1), (b)-(c), (f)(1) (internal citation omitted). We understand you to assert the information that was not required to be filed as part of Form A was provided to the department under section 823.201(e) of the Insurance Code. Section 823.201(e) provides “[t]he acquiring person and all subsidiaries within the acquiring person’s control in the insurance holding company system shall provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.” *Id.* § 823.201(e). You do not indicate that the exceptions to confidentiality found in subsection (c) or (d) of section 823.011 apply to the information at issue, or that the insurer to which it pertains has consented to its disclosure. *See id.* § 823.011(b)-(d). We, therefore, conclude that the department must withhold this information under section 823.011 of the Insurance Code pursuant to section 552.101 of the Government Code.<sup>2</sup>

---

<sup>2</sup>As our ruling is dispositive, we need not address Verde’s arguments against disclosure of this information.

In summary, to the extent the submitted information is required to be filed as part of Form A, it must be released to the requestor. To the extent the submitted information was not required to be filed as part of Form A, it must be withheld under section 823.011 of the Insurance Code pursuant to section 552.101 of the Government Code.

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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 536361

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Mr. Kenneth W. Phillips  
President  
Puritan Life Insurance Company of America  
16801 Addison Road, Suite 400  
Addison, Texas 75001-5693  
(w/o enclosures)

Business Filings Incorporated  
Puritan Life Insurance Company of America  
701 Brazos Street, Suite 720  
Austin, Texas 78701  
(w/o enclosures)

Mr. Michael R. Perkins  
Counsel for Verde Capital Partners, LLC  
Sneed, Fine & Perry, PC  
900 Congress Avenue, Suite 300  
Austin, Texas 78701  
(w/o enclosures)