



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Mr. William Clay Harris
Staff Attorney
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2014-18237

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# 539033 (TDI #153082).

The Texas Department of Insurance (the "department") received a request for the top 20 homeowner insurers that amended a specified portion of their policies during a specified time period.¹ 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 Wellington Insurance Company ("Wellington"), BancInsure, Inc. ("BancInsure"), and Worth Casualty Company ("Worth Casualty") 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

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 a representative of Wellington, BancInsure, and Worth Casualty. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the representative of Wellington, BancInsure, and Worth Casualty claims the information submitted by the department is not responsive to the instant request. A governmental body must make a good-faith effort to relate to a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the department has reviewed its records and determined the documents it has submitted for Wellington, BancInsure, and Worth Casualty are responsive to the request. Thus, we find the department has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the department must release the information at issue to the requestor under the Act.

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. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Wellington, BancInsure, and Worth Casualty explaining why the submitted information should not be released. Rather, the representative of Wellington, BancInsure, and Worth Casualty only claims the information is not responsive. *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 Wellington, BancInsure, and Worth Casualty may have in the information.

Section 552.137 of the Government Code 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 address we have marked is not of a type excluded by subsection (c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The department must release the remaining 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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/akg

Ref: ID# 539033

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Steven T. Poston, II
General Counsel
Wellington Risk Insurance Agency
P.O. Box 230
Fort Worth, Texas 76101
(w/o enclosures)