



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2014

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

OR2014-23045

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# 547362 (TDI No. 155087).

The Texas Department of Insurance (the "department") received a request for information pertaining to any investigation regarding the requestor or the requestor's agency. You state the department is withholding any information or material acquired by the department that relates to a fraud investigation under section 701.151 of the Insurance Code in accordance with a previous determination issued to the department. *See* Open Records Letter No. 2005-05223 (2005) (determining information acquired by the department that is relevant to an inquiry by the insurance fraud unit that the commissioner deems confidential is excepted from disclosure and need not be submitted to this office for review under section 552.301 of the Government Code); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 36.252 of the Insurance Code, which reads as follows:

(a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the department determines is relevant to further or complete an investigation.

(b) Investigation files are not open records for purposes of [the Act], except as specified herein.

Ins. Code § 36.252. Section 36.251 of the Insurance Code states “investigation file”

means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

- (1) relevant to an investigation by the insurance fraud unit; and
- (2) subject to Section 701.151 [of the Insurance Code].

Id. § 36.251. You state the submitted information is part of a case file pertaining to a pending investigation by the department’s enforcement section. You indicate the submitted information is not relevant to an investigation by the department’s insurance fraud unit. Accordingly, based on your representations and our review, we find the submitted information is confidential under section 36.252 of the Insurance Code and must be withheld under section 552.101 of the Government Code until such time the department determines the submitted information is no longer relevant to further or complete its investigation.

You ask this office to issue a previous determination permitting the department to withhold pending investigation and enforcement files under section 552.101 of the Government Code in conjunction with section 36.252 of the Insurance Code without seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping final flourish.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 547362

Enc. Submitted documents

c: Requestor
(w/o enclosures)