



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Kathlyn C. Wilson
Director
Office of Agency Counsel
Legal Section MC 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-04395

Dear Ms. Wilson:

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# 555694 (TDINo. 156834).

The Texas Department of Insurance (the "department") received a request for a copy of the complete licensing file of a named individual. We understand the department will release some responsive information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses information protected by other statutes, such as section 36.252 of the Insurance Code, which provides the following:

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.

(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. The department states the submitted information is a case file pertaining to a pending investigation by the department’s enforcement section. The department does not indicate the information at issue is relevant to an investigation by the department’s insurance fraud unit. Accordingly, based on the department’s 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.

The department asks 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); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). After due consideration, we have decided to grant your request for 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 (1) if the information is not relevant to an investigation by the department’s insurance fraud unit and subject to section 701.151 of the Insurance Code and (2) only for such time as the department determines the information is relevant to further or complete its investigation. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 555694

Enc. Submitted documents

c: Requestor
(w/o enclosures)