



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2015

Mr. Stanton Strickland
Associate Commissioner
Legal Section, General Counsel Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1A
Austin, Texas 78714-9104

OR2015-07327

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# 560055 (TDI# 158431).

The Texas Department of Insurance (the "department") received a request for three specified Form A applications. The department states it has released some of the requested information. The department states it will withhold or release some of the requested information in accordance with Open Records Letter No. 2014-16508 (2014).¹ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). The department states it will redact e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).² Although the department takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of Anchor Insurance Holdings, Inc.

¹In Open Records Letter No. 2014-16508, we determined, to the extent the submitted information was required to be filed as part of Form A, it must be released to the requestor; but to the extent the information at issue was not required to be filed as part of Form A, it must be withheld under section 823.011 of the Insurance Code in conjunction with section 552.101 of the Government Code.

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. See ORD 684.

("Anchor"); Anchor Specialty Insurance Company; HCC Insurance Holdings, Inc.; and Producers Agriculture Insurance Company. Accordingly, the department states, and provides documentation showing, it notified the third parties of the request for information and of their 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 Anchor. We have considered the submitted arguments and reviewed the submitted information.

We understand some of the submitted information may have been submitted to the department for informational purposes and is not part of Form A. We note the requestor only seeks the Form A applications at issue. Accordingly, to the extent the department determines any of the submitted information is not required to be filed as part of Form A, this information is not responsive to the instant request.³ 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.

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 only received comments from the Anchor explaining why the responsive submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the responsive submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the responsive submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Next, we note the responsive submitted 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 the following:

(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

³As our determination that this information is not responsive to the request is dispositive, we need not address the arguments against disclosure of this information.

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).⁴ *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). Accordingly, we conclude this provision makes Form A expressly public. Because the responsive information consists of information required to be filed as part of Form A, we find section 823.154(c) is applicable to the responsive information.

Anchor argues its responsive submitted information is excepted from disclosure under section 552.110 of the Government Code. We note information 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). Therefore, none of Anchor’s responsive submitted information may be withheld under section 552.110 of the Government Code. As no further arguments against disclosure have been raised, the department must release the responsive submitted information pursuant to section 823.154(c) of the Insurance 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁴We understand the “statement” required to be filed under section 823.154(a) is known as “Form A”. *See* 28 T.A.C. § 7.209.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 560055

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jocelyn M. Ray
HCC Insurance Holdings, Inc.
C/o HCC Service Company
13403 Northwest Freeway
Houston, Texas 77040
(w/o enclosures)

Mr. Wesley Walker Shipley
Anchor Specialty Insurance Company
P.O. Box 3730
Beaumont, Texas 77704
(w/o enclosures)

Mr. Kenneth Hopkinson
Winstead
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(w/o enclosures)

Ms. Kendall Jones
Producers Agriculture Insurance Company
P.O. Box 229
Amarillo, Texas 79105-0229
(w/o enclosures)

Anchor Insurance Holdings, Inc.
c/o Ms. Sandy P. Fay
Colodny Fass
100 Southeast 3rd Avenue
One Financial Plaza
Fort Lauderdale, Florida 33394
(w/o enclosures)