KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Mr. Bob Davis
Staff Attorney
Office of Agency Counsel
Legal Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-08151

Dear Mr. Davis:

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# 561492 (TDI No. 158719).

The Texas Department of Insurance (the "department") received a requests for the Form A - Acquisition Statement, any exhibits, and any amendments thereto for Dallas National Insurance Company ("DNIC"). You state the department will redact access device numbers pursuant to section 552.136(b) of the Government Code,[1] e-mail addresses of members of the public subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009),[2] and social security numbers pursuant to section 552.147(b) of the

[1]Section 552.136 authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. *See* Gov't Code § 552.136(b). If a governmental body redact such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

[2]Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code.[3] You claim portions of the submitted information are 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 third parties. Accordingly, you state, and provide documentation showing, you notified DNIC and Lonestar Holdco of the request 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 considered the submitted arguments and reviewed the 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 either of the third parties explaining why the information at issue should not be released. Therefore, we have no basis to conclude either of the third parties 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 either of the third parties may have in the information.

Next, we note the requested information appears to be 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;

---

[3]Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

> (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 the Form A expressly public. However, we are unable to determine if all of the submitted exhibits are required to be filed as part of the Form A. To the extent the department determines the submitted information is required to be filed as part of Form A, we find section 823.154(c) is applicable to that information.

The department contends portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with common-law privacy. Additionally, as noted above, the department states it will redact information subject to sections 552.136, 552.137, and 552.147 of the Government Code. As previously noted, section 823.154(c) makes the 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 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, the department may not withhold any of the information required to be filed as part of Form A under section 552.101 in conjunction with common-law privacy. Additionally, the department may not redact any of the information required to be filed as part of the Form A that is subject to section 552.136, section 552.137, or section 552.147 of the Government Code.

However, 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 department's arguments for this information under section 552.101 of the Government Code in conjunction with

---

[4]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.

common-law privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we agree the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department determines the submitted information is required to be filed as part of Form A, it must be released to the requestor. To the extent the department determines the information at issue is not required to be filed as part of Form A, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information.[5]

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

---

[5]In this instance, we note the department is authorized to redact access device numbers pursuant to section 552.136(b) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and e-mail addresses of members of the public pursuant to Open Records Decision No. 684 from this information prior to releasing it to the requestor.

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

Sincerely,

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 561492

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Dallas National Insurance Company
5501 Lyndon B. Johnson Freeway, Suite 1200
Dallas, Texas 75240-2300
(w/o enclosures)

Dallas National Insurance Company
704 North King Street, Suite 102
Wilmington, Delaware 19801
(w/o enclosures)

Lonestar Holdco
c/o: Southport Lane Management, LLC
350 Madison Avenue, 21st floor
New York, New York 10017
(w/o enclosures)