



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2015

Mr. Bob Davis  
Office of Agency Counsel  
Legal Section MC 110-1C  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2015-15344

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# 573310 (TDI# 148933).

The Texas Department of Insurance (the "department") received a request for six categories of information pertaining to American Risk Insurance Company ("ARI"). You state the department has released most of the requested information. You also state the department will redact e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Although the department takes no position as to whether the remaining submitted information is excepted under the Act, it states release of the information may implicate the proprietary interests of the following third parties: ARI; Adjusters International; York Risk Services Group; York SLA; EGP & Associates, Inc.; SimpleSolve, Inc.; 4669 SW Fwy Partners, L.L.C.; and a named attorney. Accordingly, the department states, and provides documentation showing, it notified the third parties 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 predecessor to section 552.305 permits governmental body to rely on interested third party

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<sup>1</sup>Open 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.

to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.<sup>2</sup>

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 any third party explaining why the responsive submitted information should not be released. Therefore, we have no basis to conclude any third party 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 third parties may have in the information.

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. This section encompasses information protected by other statutes, such as section 823.011 of the Insurance Code. Section 823.011 states, in relevant part, the following:

(a) This section applies only to information, including documents and copies of documents, that is:

(1) reported or otherwise provided under Subchapter B or C [of Chapter 823 of the Insurance Code] or Section 823.201(d) or (e)[.]

...

(b) The information shall be confidential and privileged for all purposes. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected affiliates notice and an opportunity to

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<sup>2</sup>We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code and third party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

...

(f) Information described by Subsection (a), including information in the possession of the National Association of Insurance Commissioners under this section, is confidential and privileged for all purposes, including for purposes of:

(1) [the Act.]

Ins. Code § 823.011(a)(1), (b)-(c), (f)(1). You state some of the submitted information, which consists of an Amended Form B Insurance Holding Company System Registration Statement, was provided to the department under subchapter B of chapter 823 of the Insurance Code. You do not indicate the exceptions to confidentiality found in subsection (c) or (d) of section 823.011 apply to the information at issue, or that the insurer to which it pertains has consented to its disclosure. *See id.* § 823.011(b)-(d). We, therefore, conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 823.011 of the Insurance Code. As you raise no other exception to disclosure, the remaining submitted information must be released.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 573310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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