



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2015

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

OR2015-22691

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# 584968 (TDI# 164328).

The Texas Department of Insurance (the "department") received a request for specified homeowners filings for three specified companies. You state the department is releasing some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Lighthouse Property Insurance Corporation ("Lighthouse"); Maison Insurance Company ("Maison"); and First Community Insurance Company ("First Community") 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Maison. We have considered the submitted information.

Initially, Maison contends some of its information is not responsive to the present request for information. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the department has reviewed its records and determined the documents at issue are responsive to the request. Thus, we find the department has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we will determine whether the department must release the submitted information to the requestor under the Act.

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 Lighthouse or First Community explaining why the information at issue should not be released. Therefore, we have no basis to conclude Lighthouse or First Community has protected proprietary interests 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, 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 information at issue on the basis of any proprietary interests Lighthouse or First Community may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Maison states it has competitors. In addition, Maison states it "faces significant competition in the Texas individual residential homeowners insurance market" and release of the information it marked "could result in significant harm to Maison's ability to compete in these markets because it would allow competitors to know how it does business, what markets it targets, [and] how it underwrites new business and calculates premium rates[.]" After review of the information at issue and consideration of the arguments, we find Maison has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a).

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of

the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department may withhold the information we have marked under section 552.104 of the Government Code. The department must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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

Sincerely,



Nicole Thomas
Assistant Attorney General
Open Records Division

NT/eb

Ref: ID# 584968

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Patrick Lawrence White
Lighthouse Property Insurance Corporation
5545 South Orange Avenue
Orlando, Florida 32809
(w/o enclosures)

CT Corporation System
for Lighthouse Property Insurance Corporation
1999 Bryan Street, Suite 900
Dallas, Texas 75201-3140
(w/o enclosures)

Mr. Bruce McCandless III
Counsel for Maison Insurance Company
Mitchell Williams
500 West Fifth Street, Suite 1150
Austin, Texas 78701
(w/o enclosures)

CT Corporation System
for Maison Insurance Company
1999 Bryan Street, Suite 900
Dallas, Texas 75201-3140
(w/o enclosures)

Mr. Nicholas G. Popp
First Community Insurance Company
11101 Roosevelt Boulevard N
St. Petersburg, Florida 33716
(w/o enclosures)

Mr. Timothy Scott Stroble
First Community Insurance Company
P. O. Box 15707
St. Petersburg, Florida 33733-5707
(w/o enclosures)

Corporation Service Company
for: First Community Insurance Company
211 East 7th Street, Suite 620
Austin, Texas 78701-3218
(w/o enclosures)