



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

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

OR2016-00043

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# 592810 (TDI# 158867).

The Texas Department of Insurance (the "department") received a request for all records pertaining to a named individual. You state you are releasing some information to the requestor. We understand you will redact e-mail addresses in the submitted information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of certain third parties, namely: Hull & Company, Inc.; Appalachian Underwriters, Inc.; Great American Insurance Co.; and American Liberty Insurance Co.² Accordingly, you state, and provide documentation showing, you notified these third parties of the request for

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

²We 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). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

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 to raise and explain applicability of exception in the Act in certain circumstances). We have 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 any of the third parties explaining why the responsive information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the responsive 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 submitted information on the basis of any proprietary interest the third parties may have in the information. As no exceptions to disclosure have been raised, the department must release the submitted information.

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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 592810

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Hull & Company, Inc. - Dallas
12801 North Central Expressway, Suite 1100
Dallas, Texas 75243
(w/o enclosures)

Appalachian Underwriters, Inc.
800 Oak Ridge Turnpike, Suite A-100
Oak Ridge, Tennessee 37830
(w/o enclosures)

Great American Insurance Company
301 East Fourth Street
Cincinnati, Ohio 45202
(w/o enclosures)

American Liberty Insurance
623 Main Street, Suite 2
Liberty, Texas 77575
(w/o enclosures)