



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2016

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

OR2016-04204

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# 597156 (TDI# 167340).

The Texas Department of Insurance (the "department") received a request for three categories of information pertaining to a specified sale and/or transfer. You state the department has released some information. You claim a portion of the submitted information is 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 multiple third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the requests 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 received comments on behalf of HC2 Holdings, Inc.; United Teacher Associates Insurance Company; and Great American Insurance Group (collectively, "HC2"); and Locke Lorde, LLP ("Locke Lord"). We have reviewed the submitted arguments and submitted information.

Initially, we note, in letters dated December 2, 2015 and December 16, 2015, the department states it wishes to withdraw its request for an open records decision with respect to portions of the submitted information because the department released this information to the requestor or concluded the information is not responsive to the instant request. Thus, this ruling does not address the public availability of information the department no longer seeks to withhold.

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 HC2 and Locke Lord. Therefore, we have no basis to conclude any of the remaining 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 interests the remaining third parties may have in the information.

Next, you note the responsive information you have marked 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 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).¹ *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 information at issue consists of information required to be filed as part of Form A, we find section 823.154(c) is applicable to this information.

HC2 argues the information at issue is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.137 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). 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, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy or section 552.104, section 552.110, or section 552.137 of the Government Code.

Section 552.101 of the Government Code encompasses 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,

¹We understand the “statement” required to be filed under section 823.154(a) is known as “Form A”. *See* 28 T.A.C. § 7.209.

after giving the insurer and its affected affiliates notice and an opportunity to 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) Chapter 552, Government Code[.]

Ins. Code § 823.011(a)(1), (b)-(c), (f)(1) (internal citation omitted). You assert the information that was not required to be filed as part of Form A, which you have marked, was provided to the department under section 823.201(e) of the Insurance Code. Section 823.201(e) provides “[t]he acquiring person and all subsidiaries within the acquiring person’s control in the insurance holding company system shall provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.” *Id.* § 823.201(e). You do not indicate that 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 this information under section 823.011 of the Insurance Code pursuant to section 552.101 of the Government Code.²

In summary, the department must withhold the information you have marked under section 823.011 of the Insurance Code pursuant to section 552.101 of the Government Code. The department must release the remaining information.

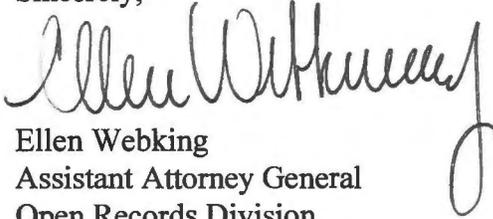
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 597156

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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