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ATTORNEY GENERAL OF TEXAS

March 10, 2015

Ms. Kathy Wilson
Director
Office of Agency Counsel
Legal Section
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1C
Austin, Texas 78714-9104

OR2015-04535

Dear Ms. Wilson:

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# 557163 (TDI # 157928).

The Texas Department of Insurance (the "department") received a request for all rate, rule, and form filings submitted to the department during a specified period of time for ACCC Insurance Company ("ACCC") and Alinsco Insurance Company ("Alinsco"). You state the department has provided some of the requested information to the requestor. Although the department takes 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 Alinsco. Accordingly, the department states, and provides documentation showing, it notified Alinsco of the request for information and of its right 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.

Initially, you acknowledge, and we agree, the department failed to request a ruling or submit the responsive information within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*

§ 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.— Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because the third-party interests at issue here can provide a compelling reason to withhold information, we will consider whether the information at issue is excepted 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 Alinsco explaining why the submitted information should not be released. Therefore, we have no basis to conclude Alinsco has a protected proprietary interest in the 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 submitted information on the basis of any proprietary interest Alinsco may have in the information. As no exceptions to disclosure have been raised, the 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, 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 557163

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)