



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Mr. David Wheelus  
Open Records Attorney  
Office of Agency Counsel, Legal Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2016-22649

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# 629726 (TDI# 174989).

The Texas Department of Insurance (the "department") received a request for a log of all market conduct examinations and investigations conducted by the department since a specific date. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted 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. Section 552.101 encompasses section 751.207 of the Insurance Code, which is part of the Insurance Market Conduct Surveillance Act and provides, in part, "[a] final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under [the Act]." Ins. Code § 751.207(a); *see id.* § 751.003(a)(6) (defining "market conduct examination"). Section 751.151 of the Insurance Code requires the department's commissioner of insurance (the "commissioner") to gather certain market information to perform a market analysis. *See id.* § 751.151; *see also id.* § 751.003(a)(3) (defining "market analysis"). If the commissioner determines further inquiry into a particular insurer or insurance practice is required, the commissioner may take certain market conduct actions provided in section 751.152(b) before

conducting a targeted examination. *See id.* § 751.152(a). However, if the commissioner determines a market conduct action specified in section 751.152(b) is not appropriate, section 751.201 permits the commissioner to conduct a targeted examination. *See id.* § 751.201. If the commissioner conducts such an examination, the commissioner must create an examination report. *See id.* § 751.206. The department states “the submitted information consists of a list of closed enforcement cases pursued by the department based on examinations conducted under section 751.201” and “may be confidential under section 751.207 because this information is derived from the confidential market conduct examinations.” Upon review, however, we find the department has failed to demonstrate the information at issue consists of a final or preliminary market conduct examination report or information obtained during the course of an examination. Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 751.207 of the Insurance Code. As no other 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 629726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)