September 7, 2017

Ms. Norma Garcia  
General Counsel  
Texas Department of Insurance  
General Counsel Division - Open Records Office (110-1C)  
P.O. Box 149104  
Austin, Texas 78701-9104

Dear Ms. Garcia:

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# 674380 (TDI# 185638).

The Texas Department of Insurance (the “department”) received a request for a specified report pertaining to a named entity. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you seek to withhold the submitted information pursuant to Open Records Letter No. 1999-1264 (1999). Open Records Letter No. 1999-1264 authorized the department to withhold information subject to former sections 8(b) and 9 of article 1.15 of the Insurance Code under section 552.101 of the Government Code without the necessity of requesting a ruling from this office. However, the 79th Texas Legislature repealed article 1.15 and codified the relevant law as section 401.058 of the Insurance Code. See Act of May 25, 2005, 79th Leg., R.S., ch. 727 § 1, 2005 Tex. Gen. Laws 1752, 1764 (codified as Ins. Code § 401.058). Further, the 85th Legislature amended section 401.058. See Act of May 22, 2017, 85th Leg., R.S., ch. 164 § 1, 2017 Sess. Law Serv. 308 (Vernon) (to be codified as an amendment to Ins. Code § 401.058). Therefore, because the law on which Open Records Letter No. 1999-1264 was based has changed, the department may no longer rely on it as a previous determination. See Open Records Decision No. 673 at 7-8 (2001)
(listing elements of second type of previous determination under section 552.301(a) of the Government Code). We will, however, address your argument against disclosure of this 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. This section encompasses information made confidential by other statutes, including section 401.058 of the Insurance Code. Section 401.051 of the Insurance Code requires the department, or an examiner appointed by the department, to visit each insurance carrier and examine the carrier’s financial condition, ability to meet liabilities, and compliance with the laws affecting the conduct of the carrier’s business. Ins. Code § 401.051(a), (b). In connection with this examination process, section 401.058 provides:

(a) A final or preliminary examination report and any information obtained during an examination are confidential and privileged for all purposes. This information is not subject to:

(1) disclosure under [the Act];

...

(b) Subsection (a) applies if the examined carrier is under supervision or conservatorship. Subsection (a) does not apply to an examination conducted in connection with a liquidation or receivership under this code or another insurance law of this state.

(c) Subsection (a) does not limit the [Commissioner of Insurance (the “commissioner”)]’s authority to use a final or preliminary examination report and any information obtained during an examination in the furtherance of any legal or regulatory action relating to the administration of this code that the commissioner, in the commissioner’s sole discretion, considers appropriate.

Ins. Code § 401.058(a)-(c); Act of May 22, 2017, 85th Leg., R.S., ch. 164 § 1, 2017 Sess. Law Serv. 308 (Vernon) (to be codified as an amendment to Ins. Code § 401.058(a)(1),(c)). The department states the submitted information consists of an insurance carrier examination report. Further, the department states the examination at issue was not conducted in connection with a liquidation or receivership. Based on the department’s representations and our review of the information at issue, we find section 401.058 is applicable to the submitted information. Therefore, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 401.058 of the Insurance Code.
Finally, you ask this office to issue a previous determination permitting the department to withhold insurance carrier examination reports under section 552.101 of the Government Code in conjunction with section 401.058 of the Insurance Code without seeking a ruling from this office. Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the department to withhold an insurance carrier examination report under section 552.101 of the Government Code in conjunction with section 401.058 of the Insurance Code without seeking a ruling from this office if the examination was not conducted in connection with a liquidation or receivership. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7.

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,

Emily Kunst
Attorney
Open Records Division

EK/eb

Ref: ID# 674380

Enc. Submitted documents

c: Requestor
  (w/o enclosures)