



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2020

Mr. Sid Pounds
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2020-08794

Dear Mr. Pounds:

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# 817874 (TDI# R006901).

The Texas Department of Insurance (the "department") received a request for six categories of information related to a specified entity. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim 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. This section encompasses information protected by other statutes, such as 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) or Section 823.0147[.]

...

¹ We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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.

Ins. Code § 823.011(a)(1), (b). You state the submitted information, which consists of exhibits to required notices, was provided to the department under subchapter C of chapter 823 of the Insurance Code. You state the exceptions to confidentiality found in subsections (c) and (d) of section 823.011 do not apply to the information at issue, and you do not indicate the insurers to which it pertains have consented to its disclosure. *See id.* § 823.011(b)-(d). Therefore, we conclude the department must withhold the submitted information under section 823.011 of the Insurance Code pursuant to section 552.101 of the Government Code.

You ask this office to issue a previous determination that would permit the department to withhold information subject to section 823.011 of the Insurance Code without requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/rm

Ref: ID# 817874

Enc. Submitted documents

c: Requestor
(w/o enclosures)