



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2020

Ms. Mary Dougherty
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2020-27879

Dear Ms. Dougherty:

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# 853057 (TDI Nos. R009247 and R009248).

The Texas Department of Insurance (the "department") received two requests from the same requestor for communications between First Continental Life & Accident Insurance Company ("First Continental") and the department pertaining to two specified topics during defined periods of time. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of First Continental. Accordingly, you state, and provide documentation showing, you notified First Continental of the request for information and of the 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 received comments from First Continental. We have considered the submitted arguments 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 information made confidential by other statutes, including sections 401.057 and 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 401.057 provides, in part, as follows:

(b) In conducting an examination under this subchapter, the department shall use audits and work papers that the carrier makes available to the department and that are prepared by an accountant or accounting firm meeting the qualifications of Section 401.011. The department may conduct a separate audit of the carrier if necessary. Work papers developed in the audit shall be maintained in the manner provided by Sections 401.020(b) and (c).

(c) The carrier shall provide the department with:

(1) the work papers of an accountant or accounting firm or the carrier; and

(2) a record of any communications between the accountant or the accounting firm and the carrier that relate to an audit.

...

(e) Information obtained under this section is confidential and may not be disclosed to the public except when introduced as evidence in a hearing.

Id. § 401.057(b)-(c), (e). Additionally, section 401.058 states:

(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.

Id. § 401.058(a)(1), (b). You state the information at issue consists of work papers and information obtained by the department during insurance carrier examinations conducted under section 401.051 of the Insurance Code. *See id.* § 401.020(a) (defining “work papers” for purposes of section 401.057). Further, you state the examinations at issue were not conducted in connection with a liquidation or receivership. Based upon your representations and our review, we find sections 401.057 and 401.058 are applicable to the submitted information. Therefore, the department must withhold the submitted information

under section 552.101 of the Government Code in conjunction with sections 401.057 and 401.058 of the Insurance Code.¹

Finally, you ask this office to issue a previous determination permitting the department to withhold work papers and information obtained during an insurance carrier examination under section 552.101 of the Government Code in conjunction with sections 401.057 and 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); 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/rm

Ref: ID# 853057

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.