

MEMORANDUM

DATE: January 14, 2011

TO: All TWIA/TFPA Agents

FROM: David Weber, Vice President, Legal

RE: Formal Request to Inspect Files

Texas Windstorm Insurance Association (TWIA) and Texas FAIR Plan Association (TFPA) have received a formal request to inspect or copy some of their files. A copy of the request for information is enclosed. The requested files include information held by TWIA and/or TFPA regarding you and your commissions. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires TWIA and/or TFPA to release your records. Generally, the Public Information Act (the Act) requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the Attorney General will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies. Gov't Code § 552.305(d).

A claim that an exception applies without further explanation will not suffice. (Attorney General Opinion H-436). You may contact **Paula Smith, Public Information Officer, at TWIA/TFPA (512-637-4031)** to review the information at issue in order to make your arguments. We will provide the Attorney General with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The Attorney General is generally required to issue a decision within 45 working days.

Texas Windstorm Insurance Association

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General Open
Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). **The requestor's (KHOU-TV) contact information is located at the bottom of this memo.**

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

The commercial or financial information prong of section 552.110 was amended by the Seventy-sixth Legislature. The amendment became effective September 1, 1999. At the time of publication of this form, there were no cases or opinions construing the amended provision.

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

Section 552.113: Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Economic Development Negotiation Information

Texas Windstorm Insurance Association

5700 South MoPac Expressway, Building E, Suite 530, Austin, Texas 78749 • P.O. Box 99090, Austin, Texas 78709-9090
512-899-4900 / Fax 512-899-4950

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.oag.state.tx.us> or call the attorney general's Opinions Library at (512) 936-1730.

BELOW PLEASE FIND A COPY OF THE EMAIL FROM MR. MARK GREENBLATT WITH KHOU-TV, DATED 1-4-11:

From: Greenblatt, Mark [mailto:mgreenblatt@khou.com]
Sent: Tuesday, January 04, 2011 6:06 PM
To: Jim Oliver
Subject: khou-tv tpia request

Hey Jim,

I hope you are well- and wish you a Happy New Year. I was unsure of the current custodian of records to send this request to, and thought perhaps you would be so kind as to forward this on to the proper person (if that person is not you) at both Texas Windstorm and Texas Fair Plan.

We would respectfully request, under tpia, an electronic copy of all publicly releasable fields in your database that you keep which contains information about all payments made to insurance agents or any other entity of any kind- related to commissions **or any other form of compensation** which would trigger the need for an IRS 1099 to be filed related to payments made by TWIA or Texas Fair Plan- for purposes of compensating any entity for their involvement in the sale or renewal of insurance plans for **all years you keep this information stored electronically.**

- 1) 1) To that extent, please fulfill this request by providing in electronic form the information you already collect and report for IRS purposes on forms such as an IRS 1099. So, for all "recipients" of monies, please provide electronically the annual amounts of what they received from TWIA & or Texas Fair Plan. Relevant fields of information should include the Payers name (TWIA or Texas Fair Plan), the Recipient's name, any "royalties" and "other income", any taxes withheld, or any other fields of information representing any other payments of any kind- as would have to be reported on a 1099. We are specifically NOT requesting the social security or federal id number for the recipient- and ask that you do NOT provide that to us. In addition, if you have a field or fields of information related to what the payments were for (i.e., commissions- or something else) please do provide.
- 2) 2) Please provide a separate table, with the same fields of information as described above, which describes the annual total of ***any*** other payments (if they exist) TWIA/TFP has made to any individual or entity at all – for any purpose not related to commission payments- that would still trigger the need for a 1099 form to be filed. If you have a field or fields of information related to what the payments were for, please do provide.

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- 3) 3) In addition, if TWIA/Texas Fair Plan keeps information/data for each "recipient" (which may be generally identified as, for instance, XYZ insurance agency) that would more specifically identify who the owners are (i.e. names of humans rather than entities or corporations), and/or who are any key contacts TWIA/TFP are aware of for each entity, please provide that information in a separate electronic table.

We would request that you fulfill this request in as easy- and less time intensive way as possible. So- if it would take less time for you to provide separate responsive tables for TWIA- and TFP, please separate the information. If it is quicker to simply provide them all together (while simply providing a separate field which identifies if the annual payment total represents payments from TWIA, or TFP), please do that.

We would prefer this information in Microsoft excel, but can also take it in Microsoft Access, or in ascii plain text (delimited).

I would kindly appreciate a short note to let me know you're in receipt of this request and am happy to speak with you or anyone else if you need clarification- or if there's something I can do to amend this request to make it easier/quicker to fulfill.

All my best,

Mark Greenblatt
KHOU-TV
1945 Allen Parkway
Houston, TX 77019
cell: 281-745-8599

FOLLOW-UP EMAIL DATED 1-7-11:

All,

Note the email from Greenblatt. He is withdrawing his request for part of the information that he requested. He just wants the commission information as far back as we have it electronically.

Jim

From: Greenblatt, Mark [mailto:mgreenblatt@khou.com]

Sent: Friday, January 07, 2011 10:54 AM

To: Greenblatt, Mark; Jim Oliver; Paula Smith

Subject: Re: khou-tv tpia request

Jim, meg called... and after speaking to her I agree to formally withdraw the entire part of this request asking for more detailed info about the recipient.

Mark

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