



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 4, 1989

A.W. Pogue
Acting Commissioner of
Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701

Dear Mr. Pogue:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 4909; this decision is OR89-005.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The State Board of Insurance received an open records request for "all public information collected, assembled or maintained by your office...regarding the insolvency, receivership, impairment, financial assistance or financial supervision of any insurance entity under your agency's auspices," and specifically for "the names and addresses of any such insurance entities that have come to the attention of your office along with a brief statement or description of each such entities [sic] financial condition." You released to the requestor current non-confidential lists of insurance companies under supervision, conservatorship, and receivership. You contend, however, that other portions of the requested information either do not exist, are not accessible to the Acting Commissioner of the board, or are protected from required public disclosure by subsections 3(a)(1), (4) and (12) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Texas Insurance Code, article 21.28A, section 3A(a) provides:

Notwithstanding any other provision of law, hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company are confidential except as provided by this section.

The exceptions to nondisclosure in section 3A do not apply here. You must, therefore, withhold all information pertaining to the supervision or conservatorship of insurance companies as provided in article 21.28A, section 3A. See Open Records Decision No. 503 (1988).

You state that the Commissioner of Insurance does not routinely compile a brief statement or description of each financially troubled insurance company's condition unless such a statement is prepared in contemplation of receivership. Because the only existing descriptions of insurance companies' financial situations are protected from public disclosure as discussed above, you need not comply with this portion of the open records request; the Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986).

Although the board does periodically prepare examination reports on the financial condition of insurance companies, you contend that these reports are protected from required public disclosure by section 3(a)(12) of the Open Records Act. Section 3(a)(12) protects:

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act.

The purpose of section 3(a)(12) is to protect certain financial information from disclosure. The test for applying section 3(a)(12) is simply whether the documents in

question come within the terms of this section. Section 3(a)(12) applies to entities that regulate "financial institutions" and/or securities. The attorney general has held that insurance companies are financial institutions for purposes of section 3(a)(12). Open Records Decision No. 158 (1977).

Section 3(a)(12) focuses on specific information generated during the regulation or supervision of "financial institutions" and/or securities. Open Records Decision No. 483 (1987). For example, investigations that identify particular savings and loan institutions may be withheld, but general discussions, compilations, or statistics regarding the general condition of the savings and loan industry may not. Open Records Decision No. 483; see also Open Records Decision No. 130 (1976). The balance sheet of a credit union and the number of members of the credit union was determined to be within the exception. Open Records Decision No. 28 (1974); see also Open Records Decision No. 187 (1978). The board's examination reports that you submitted to this office outline in detail the financial status of individual insurance companies. You may, therefore, withhold these reports pursuant to section 3(a)(12); consequently, this office need not consider your arguments as to the applicability of section 3(a)(4) to the requested documents.

You also state that the "annual financial statements of insurance companies are available to the public for inspection, but unless [the requestor] specifies which companies' annual statements he would like to inspect, it will be impossible for this agency to copy all annual statements for all companies." The difficulty or cost to a governmental body of complying with the Open Records Act does not determine whether information is available to the public. Attorney General Opinion JM-672 (1987). If a requestor makes a request for voluminous records, you may ask for a clarification of the request. See Open Records Decision No. 87 (1975). If the requestor does in fact want all of the annual financial statements, you must release them. We note, however, that the requestor must incur the costs of reproducing these records, and that you may require the requestor to post a bond for the payment of costs as a condition precedent to the preparation of the records if the preparation of the records would be "unduly costly" and their reproduction would cause undue hardship to your agency if the costs were not paid. V.T.C.S. art. 6252-17a, § 11; see e.g., Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 931 (1977). Please note that the costs of compiling

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the records must be set in consultation with the State Purchasing and General Services Commission pursuant to section 9(b) of the act.

Finally, you state that, other than the list of insurance companies in receivership that you released to the requestor, the remaining information pertaining to companies in receivership is held by the court-appointed receiver and is not accessible by the the Commissioner of Insurance. Whether records held by a court-appointed Liquidator-Receiver in the Liquidation Division of the State Board of Insurance are subject to the Open Records Act is the subject of a pending open records decision, RQ-1581. You may, therefore, withhold this information during the pendency of that decision.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-005.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
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JSR/RWP/bra

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