



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 3, 1990

Mr. Jack Claitor
General Manager
Surplus Lines Stamping Office
of Texas
P.O. Box 9906
Austin, Texas 78766

OR90-173

Dear Mr. Claitor:

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 requests were assigned ID#s 7084 and 8397.

The Surplus Lines Stamping Office of Texas received open records requests for its files on various insurance companies. The records submitted with your letter designated #ID 7084 are marked Exhibits A through D. The document submitted with the letter designated ID# 8397 is a binder, which you believe is excepted from public disclosure.

Surplus lines insurance is subject to regulation under article 1.14-2 of the Insurance Code. The Surplus Lines Stamping Office of Texas is created by this statute under the supervision of the commissioner of insurance. Ins. Code art. 1.14-2, § 6A. The stamping office provides to the commissioner an evaluation of the eligibility of surplus lines insurance contracts, collects a fee from each surplus lines agent, and performs "such other acts as will facilitate and encourage compliance with the surplus lines law of this state and rules promulgated thereunder." Id. § 6A(b). Surplus lines agents who violate certain provisions of the Insurance Code may be subject to sanctions, including an administrative penalty. Id. §§ 17, 17A. The documents at issue were assembled or prepared by the Surplus Lines Stamping Office in connection with the performance of its statutory duties.

You contend that section 3(a)(11) protects Exhibit A from required public disclosure. Section 3(a)(11) does not protect facts that are severable from advice, opinion, and

recommendation. Open Records Decision No. 450 (1986). We have marked those portions of Exhibit A that you may withhold pursuant to section 3(a)(11); the remaining information must be released.

The documents designated as Exhibit B consist of statements given in connection with an inquiry by the Surplus Lines Stamping Office into a particular insurer. The documents contain the names, addresses, and other information about the persons who gave the statement. You state that the documents marked Exhibit B are excepted from disclosure by the informer's privilege. The informer's privilege protects the identity of persons who report violations of the law as "information deemed confidential . . . by judicial decision." V.T.C.S. art. 6252-17a, § 3(a)(1). The contents of communications are protected only if they tend to reveal the identity of the informant. Roviaro v. United States, 353 U.S. 53, 60 (1957). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of inspection or law enforcement within their particular spheres. Attorney General Opinion MW-575 (1982); Open Records Decision No. 515 (1988). The purpose of the privilege is in part to prevent retaliation against informants; thus, the privilege does not apply if the party complained of knows the informant's identity. See Open Records Decision No. 208 (1978).

Information found in Exhibit B, when read in connection with other information in the file, indicates possible violations of Insurance Code provisions. The Surplus Lines Stamping Office has a duty of inspection and of encouraging "compliance with the surplus lines law of this state." The information in Exhibit B is excepted from disclosure by the informer's privilege.

You state that the documents enclosed as Exhibit C contain policy information, specifically, the name and address of the insured as well as the dates of inception and expiration of the policies. You believe that these documents should be excepted from disclosure by section 3(a)(4) of the Open Records Act, which excepts

information which, if released, would give advantage to competitors or bidders.

This exception protects the government's interest in purchasing by assuring that the bidding process will be truly competitive. See Open Records Decision No. 463 (1987). It requires a showing of harm in a particular

competitive situation. Open Records Decision No. 541 (1990). Since the state's purchasing interests are not at issue in this case, section 3(a)(4) is not applicable. There are, however, some lists of insurance companies' policyholders, which may be classified as a trade secret protected from public disclosure by section 3(a)(10). See Open Records Decision No. 306 (1982). Information identifying policyholders may be withheld; the rest of the information in Exhibit C must be released.

Exhibit D contains financial information gathered and prepared in connection with an examination of an insurance company. You state that these documents should be excepted from disclosure by section 3(a)(12), which applies to

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.

Exhibit D is excepted by section 3(a)(12). See Open Records Decision No. 158 (1977).

Your letter designated ID# 8397 concerns a request for information regarding a financial institution bond and the riders thereto. You have submitted a binder, which you believe is excepted from disclosure by section 3(a)(4) of the Open Records Act. For the reasons discussed in connection with Exhibit C, this document is not excepted from disclosure by section 3(a)(4) of the Open Records Act. The binder does not contain a list of policyholders, but only one policyholder's name, which is known to the requestor. Accordingly, no trade secret interest appears on the face of these documents. The binder is available under the Open Records Act in its entirety.

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 OR90-173.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

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Ref.: ID# 7084, 8397, 8547

Enclosures: Documents Sent