



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

January 9, 1996

Mr. Elton Bomer  
Commissioner of Insurance  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

Open Records Decision No. 637

Re: Whether work papers used in an examination of an insurance carrier by the Department of Insurance are confidential under section 552.101 of the Government Code in conjunction with article 1.15 of the Insurance Code (RQ-675)

Dear Commissioner Bomer:

The Texas Department of Insurance (the "department") has received a request for specific information relating to a named insurance company under the Texas Open Records Act, Government Code chapter 552. Specifically, the requestor seeks:

1. All documents in your possession relating to any documents relating to any responses by Houston General Insurance Company of Ft. Worth relating to 28 TAC, Section 180.3 (h), or any documents sent by the Texas Department of Insurance to Houston General Insurance Company of Ft. Worth relating to 28 TAC, Section 180.3 (h), for the time period 1990, 1991, 1992, and 1993, especially relating to Texas Workers Comp.
2. All documents in your possession relating to any performance reviews conducted on Houston General, including any graphs, presentations, correspondence to or from Houston General, for the years 1990, 1991, 1992, and 1993.
3. All documents relating to any special claim reports filed relating to Houston General Insurance Company as set forth in 28 TAC section 2.04, for the years 1990, 1991, 1992, and 1993.

4. All documents relating to any other types of reviews of Houston General Insurance Company conducted by the Texas Workers' Compensation Commission, The State Board of Insurance, or the Texas Department of Insurance, for the years 1990, 1991, 1992, and 1993, if said documents are in the possession of the Texas Department of Insurance.

The department has agreed to provide some of the requested information in its possession. We understand, however, that the department does not have information that is responsive to much of the request. The department objects to the release of records requested in items 2 and 4 regarding performance reviews conducted by the department. The department has submitted representative samples of records for our review and contends that the records are excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 8 and 9 of article 1.15 of the Insurance Code, and section 552.112 of the Government Code. We address your arguments in turn.

In order to determine the significance of the Insurance Code provisions, we must first explain the duties of the department with respect to examinations that it conducts under article 1.15 and the duties of insurance carriers with regard to audits that they are required to provide to the department under article 1.15A of the Insurance Code. Generally, an insurance carrier is required to file with the department an annual audit of its financial condition which must be conducted by an independent certified public accountant. Ins. Code art. 1.15A, §§ 1, 9. The accountant must make the work papers that were used in conducting the audit of the carrier available to the department when necessary. *Id.* § 17(b). Audit work papers are defined as

the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer and may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the accountant in the course of the accountant's examination of the financial statements of an insurer that support the accountant's opinion.

*Id.* § 17(a).

The department, on the other hand, is required by law to visit each insurance carrier at least once every three years and examine its financial condition, ability to meet liabilities, and its compliance with laws affecting the conduct of its business. *Id.* art. 1.15, § 1. In conducting its periodic examination, the department must use audits

and work papers of a qualified<sup>1</sup> accountant which the carrier under examination must make available to the department. *Id.* § 8(a). The department may, however, conduct its own separate audit of the carrier if necessary. *Id.* “Information obtained [by the department that relates to an audit] is confidential and may not be disclosed to the public . . . .” *Id.* § 8(b). Therefore, the commissioner must withhold any work papers obtained from independent auditors or the carrier under examination that relate to an audit conducted under section 9 of article 1.15A of the Insurance Code.

If a carrier is under the supervision or conservation of the department, section 9 of article 1.15 in conjunction with section 552.101 of the Government Code prohibits the disclosure of an examination report and “information obtained during the course of an examination” of the carrier. *Id.* § 9. Section 9 of article 1.15 of the Insurance Code provides:

A final or preliminary examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under the open records law . . . . This section applies if the carrier examined is under supervision or conservation but does not apply to an examination conducted in connection with a liquidation or a receivership under this code or another insurance law of this state.

The language of section 9 indicates that it applies only to examination reports and information obtained during the course of an examination of a carrier that is under supervision or conservation.

The legislative history underlying section 9 of article 1.15 supports this interpretation. The bill analysis prepared by the House Insurance Committee explains that the purpose of this provision is to except from disclosure “final or preliminary examination reports and related information from state open records laws *if the insurer being examined is under supervision or conservation.*” House Ins. Comm., Bill Analysis, H.B. 1461, 73d Leg., R.S. (1993) (emphasis added). In addition, the Sunset Advisory Commission’s recommendations to the legislature, in its review of the department, recommended, among other things, to create legislation to “[p]rovide for confidentiality of the department’s financial examinations of insurance companies through periods of supervision and conservation.” SUNSET ADVISORY COMM’N, RECOMMENDATIONS TO THE GOVERNOR OF TEXAS AND MEMBERS OF THE SEVENTY-THIRD LEGISLATURE (March 1993) at 55. Thus, section 9 of article 1.15 of the Insurance Code prohibits disclosure of examination reports and “information obtained during the course” of an examination of an insurance carrier that is under the department’s supervision or conservation.

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<sup>1</sup>See Ins. Code art. 1.15A, § 12(a).

You also contend that the department may withhold the submitted information under section 552.112 of the Government Code which excepts from required public disclosure:

information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

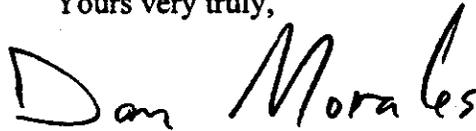
Gov't Code § 552.112(a). An insurance carrier regulated by the department is considered a "financial institution" for purposes of section 552.112. Open Records Decision No. 158 (1977) at 5-6. Therefore, the department may withhold any information relating to the financial condition of a carrier contained in the records submitted for our review.

The department has submitted representative samples of what it contends are work papers related to examination reports. We understand that the submitted records do not relate to an "examination conducted in connection with a liquidation or a receivership" and, at the time of the examination, the carrier was not under supervision or conservation. We conclude that the department may withhold information relating to the financial condition of the carrier under section 552.112 of the Government Code. We note, however, that several of the documents do not appear to relate to the financial condition of the carrier and may therefore not be withheld under section 552.112. The department may not withhold any of the documents under section 9 of article 1.15 of the Insurance Code if the records were not obtained during the course of an examination of a carrier that was under supervision or conservation. Finally the department must withhold information obtained from audit work papers that pertain to the financial condition of the examined carrier obtained pursuant to section 8 of article 1.15. We are unable to determine from a review of the submitted records whether the information contained in the records was obtained from an independent auditor's work papers. If any of the information was provided to the department under section 8 of article 1.15, the department must withhold it from required public disclosure in conjunction with section 552.101 of the Government Code.

**S U M M A R Y**

The Texas Department of Insurance may withhold under section 552.112 of the Government Code any information relating to the financial condition of a carrier. The department must withhold any information obtained from audit "work papers" that are "pertinent to the accountant's examination of the financial statements of an insurer" under section 8 of article 1.15 of the Insurance Code. Section 9 of article 1.15 makes confidential the examination reports and related work papers obtained during the course of an examination of a carrier that is under supervision or conservation. Section 9 of article 1.15 does not apply to examination reports and work papers of carriers under liquidation or receivership or to routine periodic examinations of carriers not under supervision or conservation.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

**DAN MORALES**  
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