



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

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ATTORNEY GENERAL

April 18, 1996

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

Open Records Decision No. 640

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 (ID# 39998) (formerly 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 552.¹ 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.

¹We previously addressed this request for records in Open Records Decision No. 637 (1996). In a letter to Commissioner Bomer dated April 18, 1996, we formally withdrew Open Records Decision No. 637 (1996) and replaced it with this decision.

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 qualified² 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.

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 first sentence of section 9 plainly states that examination reports and information obtained during the course of an examination of any carrier is confidential. The second sentence creates a limited exception to the general confidentiality intended for examination reports and materials in the case of certain insurers in known financial trouble. Thus, the second sentence clarifies that, in addition to periodic examination reports of healthy companies, examination reports of carriers under supervision and conservation are subject to the confidentiality provision,³ while examination reports of companies under liquidation or receivership are not.

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

²See Ins. Code art. 1.15A, § 12(a).

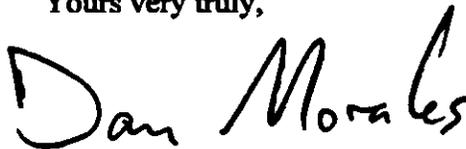
³We note, however, that section 3A of article 21.28-A provides that “[o]n termination of the supervision and conservatorship, the information in the custody of the department that relates to the supervision and conservatorship becomes public information.”

a receivership.” The department must therefore withhold the documents under section 9 of article 1.15. In addition, the department must withhold audit work papers obtained from independent auditors pursuant to section 8 of article 1.15. Because we conclude that the department must withhold the requested information under Insurance Code confidentiality provisions, we do not address your arguments under section 552.112 of the Government Code.

S U M M A R Y

The Texas Department of Insurance 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. Section 9 of article 1.15 does not apply to examination reports and work papers of carriers under liquidation or receivership. This decision replaces Open Records Decision No. 637 (1996).

Yours very truly,



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