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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 26, 1991

Ms. Karen J. Cox
Staff Attorney
Legal Counsel, Compliance 016-1
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR91-106

Dear Ms. Cox:

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 10618 and 10944; your most recent correspondence with this office was assigned ID# 11439.

The State Board of Insurance (the board) received open records requests from two individuals for any market conduct examination reports of the George Washington Life Insurance Company and any supporting documents thereof. You have submitted to this office one such examination report and contend that it comes under the protection of 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 test for applying section 3(a)(12) is simply whether the documents in question come within the terms of this section. 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) protects specific financial information generated during the regulation or supervision of "financial institutions." Open Records Decision No. 483 (1987). The board's examination report that you submitted to this office outlines in detail

the financial status of an insurance company; the report therefore comes within the scope of section 3(a)(12).

One of the requestors of the report has raised the issue of waiver with regard to this information, stating

[a]t least one of the market conduct examinations forms the factual basis for Order No. 90-0838; therefore, it would seem that any confidentiality concerning any market conduct examination which forms the basis of Order No. 90-0838 has been waived.

You have informed this office, however, that neither the examination report nor any of its supporting documents were ever entered into evidence at a public hearing and that the content of these documents have been released only to the insurance company being examined. Given these facts, it cannot be said that the board has waived the right to withhold these documents; they may therefore be withheld pursuant to section 3(a)(12).

One of the requestors also seeks records reflecting any disciplinary actions taken by the board against Total Plan Services, Inc. (TPS). You state that the board is planning to take action against TPS's application for a license based on allegations that it violated provisions of the Insurance Code and contend that the board's records pertaining to such action come under the protection of section 3(a)(3). Based on your representation that quasi-judicial proceedings against TPS are anticipated, you may withhold this information at this time pursuant to section 3(a)(3). See Open Records Decision No. 452 (1986). Please note, however, that once any of this information is obtained by the parties to the litigation, e.g. through discovery, no section 3(a)(3) interest will exist with respect to that information. Open Records Decision Nos. 349, 320 (1982).

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 OR91-106.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

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SA/RWP/lcd

Ref.: ID# 11439

ID# 10944

ID# 10618

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