



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 23, 1992

Mr. Jeff Hankins
Program Division, Legal Services, 110-1C
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR92-90

Dear Mr. Hankins:

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# 14857.

The Department of Insurance (the department) has received a request for information relating to The Administrators Corporation, a third party administrator. In addition, the requestor seeks a certified copy of a cease and desist order issued by the department against the Middle Atlantic Life Insurance Company. You do not object to release of some of the requested information. You claim, however, that a document regarding an "On-Site Examination of Third Party Administrator" and the financial statements of The Administrators Corporation covering the years 1986 through 1990 are excepted from required public disclosure by sections 3(a)(1) and 3(a)(12) of the Open Records Act.

Section 3(a)(12) excepts from required public disclosure

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.

In Open Records Decision No. 158 (1977), this office relied upon a statutory definition of "financial institution" and upon legislative intent in determining whether a life insurance company and a group hospital service corporation constitute "financial institutions" for purposes of section 3(a)(12) of the Open Records Act. "Financial institution," as defined by article 1528g, section 1(3), V.T.C.S., includes:

. . . any banking corporation or trust company, building and loan association, governmental agency, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

On the basis of this definition of "financial institution" and the legislative intent underlying section 3(a)(12), this office determined that a life insurance company was a "financial institution" for purposes of section 3(a)(12) but that a group hospital service corporation was not a "financial institution" because it "does not loan and invest money as its primary object." Open Records Decision No. 158 at 6.

Section 1 of article 21.07-6 of the Insurance Code provides the following definition of a third party administrator:

(1) "Administrator" means a person who collects premiums or contributions from or who adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state

An administrator, however, does not include, among other things, an insurance company, an insurance agent, a bank, credit union, savings and loan association, or other financial institution that is subject to supervision or examination under federal or state regulatory authorities. Ins. Code 21.07-6, § 1. The definition does not indicate that third party administrators are "engaged primarily in lending or investing funds." Open Records Decision No. 158 at 5. You have not demonstrated that this third party administrator is a "financial institution" for purposes of section 3(a)(12) as this office defined that term in Open Records Decision No. 158. Accordingly, you may not withhold the requested information under section 3(a)(12).

You also claim that the requested information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Article 1.18 of the Insurance Code provides, in part:

Each examiner and assistant examiner . . . will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the State Board of Insurance, or their authorized representative, or when required as witness in an administrative hearing before the Board or the Commissioner or in Court.

This provision governs the revelation of examination reports by the examiners, while the request at issue seeks information held by the department. Nothing in article 1.18 prevents the department from revealing the information gathered by examiners. See Open Records Decision No. 158 at 1-2. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act and must be released.

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 OR92-90.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/mc

Ref.: ID# 14857
ID# 14954

Enclosures: Open Records Decision No. 158
Documents

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