



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1993

Mr. Jeff D. Hankins
Legal Assistant, Regulated Lines Section
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-296

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19544.

The Texas Department of Insurance (the department) received a request for "all information used by the [department] in determining 'resident' status as it pertains to Article [] 21.28 . . . of the Texas Insurance Code," including "any and all briefs or memoranda prepared by the [department] and submitted to the Texas Attorney General and/or any other state agency or department regarding the definition of 'resident,'" including "the brief submitted to the Attorney General in 1990 by then Commissioner Pogue, . . . [pertaining to] Attorney General Opinion JM-1223 (1990)."

In response to this request you submitted information in the possession of a particular special deputy receiver for a certain insurance company which is in receivership. That is, you submitted information which is in the possession of the special deputy receiver for the Knickerbocker Life Insurance Company and which pertains to a claim by Life of America Insurance Company for reimbursement of funds mistakenly paid to Eleuterio Prieto Garcia pursuant to a reinsurance agreement with Knickerbocker Life Insurance Company. You claim that this information is in the possession of the deputy receiver in her capacity as court-appointed receiver of the company, and that they are therefore records of the judiciary, which are not subject to the Open Records Act. V.T.C.S. art. 6252-17a, § 2(1)(H). In the alternative, you raise several exceptions to the required public disclosure of this information, sections 3(a)(3), 3(a)(7) and 3(a)(11) of the Open Records Act.

Records of the judiciary are not subject to the Open Records Act. *Id.* A receiver appointed by a court pursuant to article 21.21 of the Insurance Code holds the business books and records of a delinquent insurance company for the court; thus, the insurer's records and books are records of the judiciary. Open Records Decision No. 610 (1992).

The documents you submitted are in the possession of the special deputy receiver¹ for the Knickerbocker Insurance Company and are from the file concerning a claim against that company. A receiver has authority, subject to the direction of the court, to conduct the insurer's business, including the authority to settle claims against the insurer. Ins. Code art. 21.28, § 2(g). Thus, the submitted documents are records of the receiver who is acting for the court in settling a claim against the insurer; therefore, the documents are records of the judiciary. Accordingly, the records are not records of a governmental body subject to the Open Records Act. *See* Open Records Decision No. 610.

We note that the brief pertaining to Attorney General Opinion JM-1223 was not included in the materials you submitted. As you raise no exceptions to its release, we assume you will provide a copy of the brief. We also note that the request was worded in general terms for "all information used by the [department] in determining 'resident' status as it pertains to Article [] 21.28 of the Texas Insurance Code." The documents you submitted as responsive to this request for general information are from the file of a particular case which concerns the issue of residency for purposes of article 21.28 of the Texas Insurance Code. If the department possesses information used by the board in determining resident status that is not in the possession of the receiver for Knickerbocker Insurance Company or some other insurer, it may be subject to the Open Records Act. The release of such information would of course depend on whether it was excepted from required public disclosure by one of the exceptions in the Open Records Act.

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 contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

¹The Commissioner of Insurance may appoint a special deputy receiver who has all of the powers of a receiver granted under the Insurance Code. Ins. Code art. 21.28, § 12(b).

KHG/SG/le

Enclosures: documents submitted

Ref: ID# 19544
ID# 19754

cc: Mr. Sergio Gonzalez
Stading & Associates
5845 Onix, Suite 104
El Paso, Texas 79912
(w/o enclosures)