



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1994

Ms. Alesia L. Sanchez  
Legal Assistant  
Legal Service, 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR94-468

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 25783.

The Department of Insurance (the "department") has received a request for information relating to "the purchase and possible default or other mortgage and/or improvement loan difficulties of Jim Mattox or Sabine-Waller Creek, Ltd. or Bankers Protective Life Insurance Co., or any combination" at a certain location. The department asserts that some of the information is excepted from required public disclosure under section 552.111. It also suggests that an appraisal report and a document entitled "Confidential Memorandum" may be protected because they implicate the privacy or property interests of a third party, citing section 552.305 of the act. The department has submitted the foregoing documents and "representative samples" of information that it believes to be excepted under section 552.111 to this office for our review.

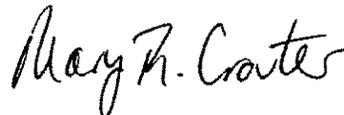
We first consider the appraisal report and "Confidential Memorandum." You state that the appraisal report was provided to the conservator of the department by counsel for an insurance company "with the agreement not to disclose to the public." You state that the "Confidential Memorandum" was prepared by the president of the insurance company and includes "items such as growth strategies, investment strategies, proposing financing, and projection of earnings."

Section 552.305 is not an exception to disclosure. Rather, it provides that in a case in which a third party's privacy or property interests may be at stake, the third party may submit in writing to this office reasons for withholding the information. This office notified counsel for the insurance company of the request and provided an opportunity for the insurance company to explain why this information should be withheld from public disclosure in a letter dated May 11, 1994. Counsel has not responded to our letter, nor has the department identified which exceptions might protect this information or explained why. Furthermore, although the department states that the appraisal report was given to the department's conservator, it did not state that the insurance company is in conservatorship or under supervision. Thus, the department has not provided any information from which we could conclude that the information is confidential by statute. *See, e.g.,* Ins. Code art. 21.28-A, § 3A. Finally, it is well-established that a governmental body cannot enter into an enforceable agreement to keep information confidential unless it has the express statutory authority to do so. Open Records Decision No. 585 (1991). The department has not established that its agreement to keep the appraisal report confidential is expressly authorized by statute. Therefore, we have no basis for concluding that this information must be withheld from required public disclosure under an exception protecting the interests of third parties, such as sections 552.101 or 552.110.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In a recent opinion that reexamined the section 552.111 exception, this office concluded that section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* We have reviewed the information submitted by the department. We have marked a few statements that constitute advice, recommendations, or opinions reflecting the policymaking processes of the department and that therefore may be withheld under section 552.111. The remainder of the information is factual in nature and must be released.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

Ref.: ID# 25783

Enclosures: Marked documents

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