



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1994

Mr. Russell R. Oliver  
General Counsel  
Texas Workers' Compensation Insurance Fund  
100 Congress Avenue, Suite 300  
Austin, Texas 78701-4042

OR94-709

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29021.

The Texas Worker's Compensation Insurance Fund ("the Fund") received a letter dated August 26, 1993, which contained a request for "the names and addresses of all insurance agents (licensed in the State of Texas) who have submitted policies which have been bound by the Texas Workers' Compensation Insurance Fund since January 1, 1991." On September 8, 1994, the Fund asked this office for a decision about whether the requested information is excepted from required public disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Sections 552.301 and 552.302 of the Government Code require a governmental body to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public.<sup>1</sup> *Hancock v. State Bd. of Ins.*,

---

<sup>1</sup>Although the request letter was dated August 13, 1993, we are not able to say when the Fund received the request for information. We note that on August 26, 1993, the Fund responded to the request by letter dated August 26, 1993. In that letter, the former counsel for the Fund explained that the Fund

797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Where information is made confidential by other law, the presumption of openness is overcome. *See* Open Records Decision No. 150 (1977). We, therefore, will consider whether another law makes the requested information confidential.

You raise section 2(b) of article 5.76-3 of the Insurance Code, which states in part as follows:

The board [of directors of the fund] may . . . refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders.

You maintain that the release of a list of all insurance agents who have placed business with the Fund would give advantage to the Fund's competitors, specifically in the area of marketing and sales. You say "[t]o require the Fund to provide its competitors with a list of all agents who have placed business with the Fund would be to provide a shopping list of potential customers to the Fund's competitors. The Fund's competitors all are private insurance companies which are not subject to the open records law. Therefore, providing such a list would provide a competitive advantage to those companies."

We agree that the release of the requested information could give advantage to the Fund's competitors. *Cf.* Open Records Decision Nos. 552 (1990) (determining customer list to be trade secret of gas company); 437 (1986) (release of customer list would cause harm to competitive position of utility district bond underwriters); 255 (1980) (determining customer list to be trade secret). We, therefore, conclude that the Fund must withhold the requested information based on section 552.101 of the Government Code in conjunction with section 2(b) of article 5.76-3 of the Insurance Code.

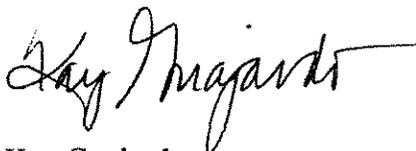
---

(Footnote continued)

would not release the information pursuant to section 3(a)(4) and 3(a)(10) of former V.T.C.S. article 6252-17a (now sections 552.104 and 552.110 of the Government Code) and section 2(a) of article 5.76 of the Insurance Code. However, a decision of the Attorney General must be sought whenever the applicability of a particular exception to particular information has not already been determined. *See* Open Records Decision No. 435 (1986) at 2. No decision has applied the exceptions you raise to the particular information at issue here. Thus, the Open Records Act does not authorize the Fund to withhold the requested information, absent a decision from the Attorney General that the Fund may do so. *See id.*

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 our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/KKO/rho

Ref.: ID# 29021

cc: Mr. Larry E. Kosta  
Vice President  
Colonial Casualty Insurance Company  
11615 Angus Road, Suite 219B  
Austin, Texas 78759