



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1995

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

OR95-381

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# 32320.

The Texas Workers' Compensation Insurance Fund (the "fund") received a request for the following information:

1. All of the proposed and audited budgets for the fund since its inception two years ago;
2. The back-up material to produce those budgets for the following budgetary categories:

Salaries
Traveling expenses
Outside professional services
Entertainment expenses
Employee car leasing expenses.

You state that you clarified this request with the requestor in a subsequent telephone conversation, and have agreed to provide the requestor with all of the information she is currently requesting with the exception of the fund's salary pay schedule system and individual salary information for fund employees. You claim that this information is excepted from disclosure under article 5.76-3, section 2(b), of the Insurance Code and sections 552.101 and 552.104 of the Government Code.

We note that the date of the request is March 3, 1995. The request appears to have been faxed to the fund the same day. You requested a decision from this office on March 15, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. Gov't Code § 552.301(a). 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. *Id.* § 552.302; *Hancock v. State Bd. of Ins.*, 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 Hancock*, 797 S.W.2d at 381. You have not shown compelling reasons why the information at issue should be withheld under section 552.104. Consequently, this office deems this exception as being waived.

However, where information is made confidential by other law, the presumption of openness is overcome. *See* Open Records Decision No. 150 (1977). Therefore, we 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.

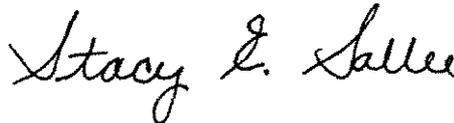
You maintain that the release of individual salary information and the fund's salary pay schedule "would provide significant advantage to our competitors, by providing them valuable information with which to recruit away valued fund employees in the underwriting, benefits, and loss prevention departments." You cite as authority for your argument a previous ruling in which this office concluded that the fund could withhold customer information.

However, the statute indicates that the "competition" that is being protected is competition for customers, not competition for employees. We believe that the statute's reference to "claims," "rates," and "underwriting guidelines" suggests that the legislature intended to protect information that would be useful to the fund's competitors in competing for the fund's insurance business; that is, its customers. While we recognize the usefulness of salary information in the recruitment of the fund's employees, we do not believe that access to the fund's salary information would provide an advantage to another insurance company in competing for customers. Therefore, we conclude that information regarding the fund's salaries is not within the scope of the statute.

Additionally, this office has long held that the salaries of public employees are public information. Open Records Decision Nos. 455 (1987), 342 (1982), 277 (1981), 215 (1978), 165 (1977) (all holding that public employees' right of privacy does not protect salary information from disclosure); *see also* Gov't Code § 552.022(2) (listing public employees' salaries in public information category). We do not believe that the legislature intended the coverage of section 2(b) to extend to information that is, according to long-standing decisions of this office, open to the public. Therefore, the requested documents must be released.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling should be relied upon by the fund as a prior determination under section 552.301 about whether the type of information submitted with this request falls within one of the exceptions to the Open Records Act. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/KHG/rho

Ref.: ID# 32320

Enclosures: Submitted document

cc: Ms. Miriam Rozen
Staff Writer
Dallas Observer
2130 Commerce
Dallas, Texas 75201
(w/o enclosures)

¹We note that the fund did not submit to this office any documents containing salary information for individual employees. Therefore, this office has not had the opportunity to review any responsive documents. We would remind the fund that certain information pertaining to public employees may be confidential, including social security numbers, 42 U.S.C. § 405(c)(2)(C)(vii), and home addresses and phone numbers, Gov't Code §§ 552.024, .117. The Open Records Act provides: "A person commits [a misdemeanor] if the person distributes information considered confidential under the terms of this chapter." Gov't Code § 552.352(a), (b).