



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal Services, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1114

Dear Ms. Rodriguez:

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# 25476.

The Texas Department of Insurance ("TDI") has received two requests from the same requestor for information regarding Employer's Casualty Company ("ECC") and Texas Employer's Insurance Associates ("TEIA"). The first request seeks a variety of different records regarding ECC. The second request seeks a particular report relating to TEIA. A third request from a different requestor seeks all information released by TDI in response to the first and second requests.¹ TDI asserts that some information responsive to the first request is excepted from required public disclosure under sections 552.101, 552.111, and 552.112. TDI asserts that all information responsive to the second request is excepted from required public disclosure under sections 552.111 and 552.112.²

¹The third request also seeks any other information released to the first requestor. You have not raised any exceptions to required public disclosure or submitted any records responsive to this part of the third request.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must

First, you assert that some of the information responsive to the first request is confidential under section 552.101 in conjunction with article 21.49-1, section 10, of the Insurance Code. Section 3 of that article requires every insurer "which is authorized to do business in this State and which is a member of an insurance holding company system" to register with the commissioner of insurance, and to provide certain information to the commissioner. Section 10 provides in pertinent part as follows:

[A]ll information reported pursuant to Section 3[] shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person³ . . . without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.
[Footnote added.]

You suggest that some of this information was reported to the commissioner pursuant to section 3 of article 21.49-1. Assuming that this is the case, we agree that the information obtained must be kept confidential pursuant to section 10, unless the commissioner decides to release it as provided therein.

Next, you assert that some of the records responsive to the first request are excepted from required public disclosure under section 552.111. 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, 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 TDI. Most of the information you have marked as protected by section 552.111 is generally factual or deals with routine administrative matters. We have marked a few documents or portions of documents which we believe reflect the policymaking processes of TDI. This information may be excepted from required public disclosure under section 552.111.

(Footnote continued)

be submitted). This open records letter does not reach any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

³Section 10 makes certain exceptions not applicable here.

Section 552.112 of the act excepts from required public disclosure:

(a) . . . information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

(b) In this section, "securities" has the meaning assigned by The Securities Act. . . . [article 581-1 *et seq.*, V.T.C.S.]

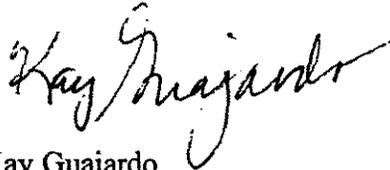
Section 552.112 protects specific examination, operating, or condition reports obtained by agencies in regulating or supervising financial institutions or securities, or information that indirectly reveals the contents of such reports. Open Records Decision Nos. 261 (1980), 29 (1974). An entity must be a "financial institution" for its examination, operating or condition reports to be excepted by section 552.112. It is not sufficient that an entity is merely regulated by an agency that regulates or supervises financial institutions. Open Records Decision No. 158 (1977). The term "financial institution" means "any banking corporation or trust company, building and loan association, governmental agency, insurance company, or related corporation, partnership, foundation, or the other institutions engaged primarily in lending or investing funds." *Id.* at 5; *see also* Open Records Decision No. 392 (1983) at 3.

In response to the first request, you assert that section 552.112 applies to an ECC quarterly statement dated June 30, 1989; an ECC examination report dated December 31, 1988, prepared by TDI; a document that appears to be a draft of that report; an ECC index to examination of work papers dated March 31, 1991; correspondence between ECC and TDI "which were necessary to supervise and regulate ECC's financial condition;" ECC actuarial examination workpapers; and what appear to be the first three pages of an "Analysis of Loss and Expense Reserves as of September 30, 1991" relating to ECC. In response to the second request, you assert that section 552.112 applies to an ECC "post mortem report" and "post-mortem summary," and the documentation supporting the report and summary. We have reviewed these records and conclude that they consist of either specific examination, operating, or condition reports obtained by TDI in regulating or supervising ECC, or information that indirectly reveals the contents of such reports. Open Records Decision Nos. 261 (1980), 29 (1974). Therefore, we conclude that they are excepted from required public disclosure under section 552.112.⁴

⁴Because we conclude that all of the information you have submitted responsive to the second request may be withheld under section 552.112, we do not address section 552.111 with respect to those records.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

MRC/KHG/rho

Ref.: ID# 25476

Enclosures: Marked documents

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