



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

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

OR95-1536

Dear Ms. Rodriguez:

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# 36435.

The Texas Department of Insurance (the "department") received a request for information about the SLS Corporation. The department seeks to withhold portions of the requested information from required public disclosure based on sections 552.101, 552.103, 552.108 and 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is considered confidential by law, including information that is confidential by statute. You inform us that pursuant to section 5(a) of article 1.10D of the Insurance Code and in accordance with Open Records Decision No. 608 (1992), the department has withheld from disclosure information received by the department's Insurance Fraud Unit. You now ask whether this statute applies to information that was created internally by department personnel and that is in pending files of the Insurance Fraud Unit.

Section 5(a) of article 1.10D reads as follows:

Any information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under

investigation from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena by another governmental entity, except a valid grand jury subpoena, until released for public inspection by the commissioner or, after notice and a hearing, a district court determines that the public interest and any investigation by the commissioner would not be jeopardized by obeying the subpoena.

This provision grants the Commissioner of Insurance (the "Commissioner") the discretion to keep certain information or material that is relevant to an inquiry by the Insurance Fraud Unit confidential. *See* Open Records Decision No. 608 (1992). You state that section 5(a) applies to the documents "because they contain and refer to 'information . . . acquired by the department that is relevant to an inquiry by the insurance fraud unit'"

We agree that the protection of section 5(a) extends to the portions of the documents generated by the Insurance Fraud Unit that reveal information acquired by the department that is relevant to an inquiry by the Insurance Fraud Unit as long as the commissioner considers it reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest. To conclude otherwise would be to defeat the protections of the statute. Accordingly, the department must withhold this information from required public disclosure. Gov't Code § 552.101.

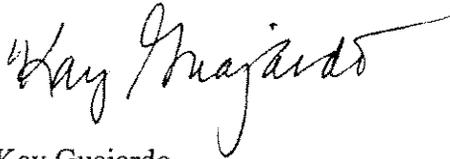
You also ask about the application of section 5(a) of article 1.10D to information in a closed file of the Insurance Fraud Unit. This information reveals the identity of a complainant. You say this information must be kept confidential to protect the public interest and that disclosure would have a chilling effect on an informer's willingness to disclose potential fraudulent activity. Because this information is relevant to an inquiry by the insurance fraud unit and because you have indicated that the commissioner has decided that the information must remain confidential to protect the public interest, we agree that the confidentiality provision applies to this information. The statute does not limit itself to information in a pending file.

Under section 5(a) of article 1.10D of the Insurance Code, the legislature has determined that the decision of the Commissioner controls the release of the information that is relevant to an inquiry by the Insurance Fraud Unit. We believe the department must withhold information from required disclosure pursuant to this provision when the following three requirements are met: (1) the information was acquired by the department or reveals information that was acquired by the department; (2) the information is relevant to an inquiry by the insurance fraud unit; and (3) the Commissioner decides the information must remain confidential for any of the reasons listed in the statute. *See* Open Records Decision No. 608 (1992). Thus, when all of these requirements are met, the department need not refer the matter to this office for a decision. *See* Gov't Code § 552.301; *Houston Chronicle Publishing Co. v. Mattox*,

767 S.W.2d 695 (Tex. 1989). The department may rely on this letter as a previous determination about whether requested information that is relevant to an inquiry by the Insurance Fraud Unit is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 5(a) of article 1.10D of the Insurance Code.

Because we resolve this question under section 552.101 in conjunction with section 5(a) of article 1.10D of the Insurance Code, we need not address your contentions that the information is also excepted under sections 552.103, 552.108, and 552.111. 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 Records Division

KHG/rho

Ref.: ID# 36435

Enclosures: Submitted documents

cc: Ms. Paula A. Stevens
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(w/o enclosures)