



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

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

OR96-0018

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# 32291.

The Texas Department of Insurance (the "department") received a request for information concerning any department investigation involving Hugo E. Pimienta, Daniel de la Garza, Enrique Pimienta, DLG Financial Corporation, Bankers Protective Life Insurance Company, and Bradford National Life Insurance Company. You say the department will release some of the requested information. However, the department seeks to withhold portions of the requested information based on sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.112 of the Government Code. You enclosed marked representative samples of the information the department seeks to withhold.

Section 552.101 excepts from required public disclosure information that is confidential by law. In conjunction with this exception, you raise three provisions in the Insurance Code. You first raise section 9 of article 1.15 of the Insurance Code. As you did not mark any of the representative samples as protected from disclosure under this provision, we cannot conclude that the department may withhold any of the requested information based on section 9 of article 1.15.

You marked portions of the representative samples as protected under article 1.15B of the Insurance Code. This provision reads as follows:

Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law, . . . and its subsequent amendments.

We agree that this provision applies to the information you marked. Accordingly, the department must withhold that information from required public disclosure based on section 552.101 of the Government Code.

You inform us that the department obtained some of the requested information under a subpoena pursuant to article 1.19-1 of the Insurance Code. Article 1.19-1 grants the Commissioner of Insurance and at least one member of the Board of Insurance statewide subpoena authority to compel attendance of witnesses and production of information. Section 1(d) of article 1.19-1 states in part as follows:

Any information or material acquired under this article under a subpoena is not a public record for as long as the board or commissioner considers reasonably necessary to complete the investigation, protect the person being investigated from unwarranted injury, or serve the public interest.

Pursuant to this provision, the subpoenaed information at issue is not an open record for as long as the board or commissioner considers reasonably necessary to complete the investigation, protect the person being investigated from unwarranted injury, or serve the public interest. Thus, the department must withhold the subpoenaed information pursuant to section 552.101 of the Government Code until the commissioner or board no longer considers it reasonably necessary to do so for the reasons given in section 1(d).

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or

quasi-judicial proceeding. Open Records Decision No. 588 (1991). You inform us that portions of the requested information relate to an ongoing investigation of Bradford National Life Insurance Company ("Bradford") for alleged violations of state insurance laws. You state that the department anticipates that this investigation will culminate in an administrative contested case against Bradford. You say that the attorney responsible for reviewing this matter has determined that the requested information is directly related to the anticipated litigation.

We conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The department may withhold the requested records pursuant to section 552.103 of the Government Code.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). For example, we have marked one document that Bradford apparently submitted to the department. You may not withhold this document from required public disclosure pursuant to section 552.103 of the Government Code. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.107(1) applies to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). The exception does not apply to information that has been communicated to third parties. *See id.* We agree that the department may withhold from required public disclosure portions of the requested information based on this provision. We have marked the documents accordingly. As the protection of section 552.111 of the Government is coextensive with the protection of section 552.107(1), we need not address the applicability of section 552.111.

Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to

law enforcement or prosecution is excepted from [required public disclosure].

This exception generally applies to evidentiary information related to a pending criminal case. Once a case is closed, however, evidentiary information may be withheld only if its release "will unduly interfere with law enforcement and crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The exception is applicable to information of an agency that is not a law enforcement agency if an investigation by that agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency and the release of the information would unduly interfere with law enforcement. *See Attorney General Opinion MW-575 (1982) at 2.*

You inform us that the department submitted some of the requested information to law enforcement agencies to investigate possible violations of state and federal laws. Assuming these investigations are continuing, we agree that the department may withhold portions of the requested information from required public disclosure based on section 552.108 of the Government Code.

Finally, we consider your section 552.112 claim. Section 552.112(a) excepts from required public disclosure

information contained in or related 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.

Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). *Open Records Decision No. 158 (1977) at 5-6.* Portions of the requested information contain information about the financial condition of insurance companies. The department may withhold this information from required public disclosure.¹

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

¹In reaching our conclusion here, we 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 be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

determination 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

KHG/ch

Ref.: ID# 32291

Enclosures: Marked documents

cc: Ms. Bridgette D. Ragon
Cowles & Thompson
Attorneys at Law
801 Main Street, Suite 4000
Dallas, Texas 75202-3783
(w/o enclosures)