



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1996

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

OR96-0260

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#38166.

The Texas Department of Insurance (the "department") received a request for information concerning the Warranty Underwriters Insurance Company. You say the department will release portions of the requested information. However, you assert that portions of the requested information are excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.107, 552.111, and 552.112 of the Government Code. You submitted representative samples of the information the department seeks to withhold from required public disclosure.

Section 552.101 of the Government Code excepts from required disclosure information that is confidential by law, including information that is deemed confidential by statute. You assert that this exception applies to portions of the requested information in conjunction with two provisions in the Insurance Code.

The first provision, article 1.15B, generally provides confidentiality for early warning system information. The department's "early warning system" consists of the department's activities conducted pursuant to the articles 1.32 and 21.28-A and chapters 20A and 23 of the Insurance Code in which various department divisions communicate information about insurers' financial condition to one another to permit early recognition that an insurance company is in difficulty. See 28 T.A.C. ch. 8 (containing standards and criteria for evaluating companies' financial condition). The 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.

Under article 1.15B of the Insurance Code, any information relating to the financial solvency of an organization regulated by the department that the department obtains while implementing the department's early warning system is confidential. Consistent with the plain language of article 1.15B, the information must relate to financial solvency; it also must relate to an organization regulated by the department under the Insurance Code or another law of the state.

We agree that article 1.15B applies to the document you marked. Consequently, the department must withhold that document pursuant to section 552.101 of the Government Code.

The second Insurance Code statute you raise is section 10 of article 21.49-1, which provides in pertinent part as follows:

All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 9 [of article 21.49-1] and all information reported pursuant to Section 3 [of article 21.49-1], shall be given confidential treatment . . . .

You inform us that portions of the requested information were reported pursuant to section 3 of article 21.49-1. We therefore conclude that section 10 of article 21.49-1 makes this information confidential. The department must withhold that information from public disclosure. Gov't Code § 552.101.

You raise section 552.103 of the Government Code which excepts from required public disclosure information that relates to pending or reasonably anticipated litigation. *See Open Records Decision No. 588 (1991)*. You assert that some of the requested information relates to reasonably anticipated litigation:

This information relates to an ongoing investigation of Warranty Underwriters Insurance Company for alleged violations of state insurance laws and an attempt to negotiate a settlement with Warranty Underwriters Insurance Company. If negotiations to the possible settlement fail, it is anticipated that this investigation will culminate in an administrative contested case against Warranty Underwriters Insurance Company as a party.

We conclude that the department has established that section 552.103 is applicable to portions of the requested information. The department may withhold that information from the requestor pursuant to section 552.103.<sup>1</sup>

You say some of the requested information includes legal advice and opinions, which are confidential attorney-client communications exempt from required public disclosure under section 552.107(1). We agree that section 552.107(1) applies to portions of the information that contain attorney advice or opinion and have marked the documents accordingly. However, section 552.107(1) does not apply to factual information in the memos that appears to be known by the subject insurance company; such information is not confidential. *See* Open Records Decision No. 574 (1990).

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We have marked the information that the department may withhold from required public disclosure based on section 552.111.

Finally, you claim section 552.112 applies to an examination report summary. 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.

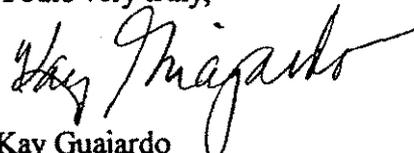
Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). Open Records Decision No. 158 (1977) at 5-6. We conclude that the department may withhold the summary from required public disclosure.

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<sup>1</sup>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). 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).

We are resolving this matter with this informal letter ruling rather than with a published open records decision.<sup>2</sup> 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 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# 38166

Enclosures: Marked documents

cc: Scott and Lisa Ogren  
11610 Birchbark Trail  
Austin, Texas 78750-1340  
(w/o enclosures)

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<sup>2</sup>In 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. Moreover, we caution you that when asserting section 552.107(1) or section 552.111, we do not believe the submission of representative samples is appropriate. We must review the particular document you seek to withhold under either of these exceptions.