



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 20, 1996

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

OR96-0358

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36434.

The Texas Department of Insurance (the "department") received a request for information about Advanced Staff Management 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. You have submitted for our review representative samples of the types of documents at issue.

Section 552.101 of the Government Code exempts 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

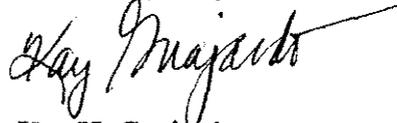
released for public inspection by the commissioner or, after notice and a hearing, a district court determines that the public interest and any investigation by the commissioner would not be jeopardized by obeying the subpoena.

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 documents generated by the Insurance Fraud Unit that contain information acquired by the department that is relevant to an inquiry by the Insurance Fraud Unit. *See* Open Records Letter No. 95-1536 (1995). Accordingly, the department must withhold this information from required public disclosure. Gov't Code § 552.101.¹

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 H. Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref: ID# 36434

Enclosures: Submitted documents

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

cc: Mr. Tom H. Stevens
President
Advanced Staff Management, Inc.
P.O. Box 29280
Dallas, Texas 75229
(w/o enclosures)