



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 18, 1996

Ms. Mary Keller  
Senior Associate Commissioner  
Legal and Compliance, MC110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-2138

Dear Ms. Keller:

You have asked whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your requests were assigned ID#s 101750 and 102748.

The Texas Department of Insurance (the "department") has received requests for information contained in closed files of the Insurance Fraud Unit (the "fraud unit"). You assert that section 552.108 of the Government Code, as interpreted by the Texas Supreme Court in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996) exempts from disclosure information in these fraud unit files.

Section 552.108 exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n 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." Gov't Code § 552.108. We note that information that is protected from disclosure under section 552.108 may be voluntarily disclosed by the governmental body, as chapter 552 does not prohibit a governmental body from voluntarily making all or part of its information public *unless* the information is otherwise confidential by law. Gov't Code § 552.007. Records that are made confidential by law may not be voluntarily disclosed. See Gov't Code § 552.101 (information not available to public if made confidential by law); 552.352 (distribution of confidential information is misdemeanor offense and constitutes official misconduct).

We also note that the protection of section 552.108 may be waived by the governmental body if it fails to timely seek a determination from this office as to the applicability of the section 552.108 exception to particular records. Section 552.302 of the Government Code provides that information "is presumed to be public information" if a request for a decision from the office of the attorney general is not timely sought. *See Gov't Code § 552.301*. However, this office has determined that when information is made confidential by other law, the governmental body does not waive the protection of such confidentiality by failure to timely seek a decision from this office. *See Open Records Decision No. 150 (1977)* (presumption of openness overcome by showing information was made confidential by other law or affects third party interests).

The records for which you assert section 552.108 appear to be records of the fraud unit that are made confidential by law. Section 5(a) of article 1.10D of the Insurance Code provides, in pertinent part:

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.

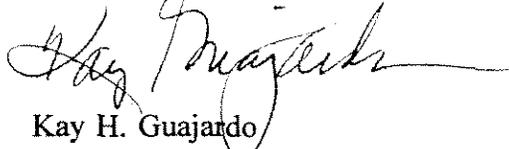
This provision grants the Commissioner of Insurance (the "Commissioner") the discretion to withhold from public disclosure information or material that is relevant to an inquiry by the fraud unit. *See Open Records Decision No. 608 (1992)*. This confidentiality provision extends to the fraud unit's closed files for as long as the Commissioner considers it reasonably necessary to protect a person under investigation from unwarranted injury or in order to serve the public interest.

Thus, if the Commissioner has made the determination that the fraud unit closed files at issue should be protected from disclosure pursuant to section 5(a) of article 1.10D, the information at issue is confidential and must be withheld from disclosure. Since the records at issue are made confidential under section 5(a) 1.10D, section 552.108 is inapplicable in this situation. *See Attorney General Opinion DM-146 (1992)* (statutes governing access to specific information prevail over the generally applicable statutes).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

KHG/RHS/ch

Ref: ID#s 101750, 102748

Enclosures: Submitted documents

cc: Mr. Ernest Humberson  
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(w/o enclosures)