



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 25, 1997

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-0623

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 requests were assigned ID#s 30374 and 104024.

The Texas Department of Insurance (the "department") received two requests for information pertaining to Allstate Insurance Company ("Allstate"). You state that the information at issue in ID# 104024 is the same information as that which is at issue in another request to this office, ID# 30374. You assert that some of the requested information is exempted from required public disclosure based on section 552.101 of the Government Code. Allstate asserts that the requested information is exempted from public disclosure under Government Code sections 552.101 and 552.110.

Section 552.101 exempts from required public disclosure information that is confidential by law, including information that is confidential by statute. You assert that the requested information is made confidential by article 1.24D of the Insurance Code. Article 1.24D, which contains a confidentiality provision for certain insurers' underwriting guidelines, reads in pertinent part as follows:

- (a) The department . . . may request and receive copies of an insurer's underwriting guidelines. Underwriting guidelines are confidential and the department . . . may not make the guidelines available to the public. . . .
- (b) This law does not preclude the use of underwriting guidelines as evidence to prosecute a violation of this code. If guidelines are used to prosecute a violation of the law, all copies of those guidelines shall

be presumed confidential and subject to a protective order until all appeals on the case have been exhausted. After the exhaustion of all appeals, if an insurer is found to have violated this code, the copies of the underwriting guidelines that were used as evidence of the violation shall no longer be presumed confidential.

You have not informed us that the requested underwriting guidelines were used as evidence to prosecute Allstate for an Insurance Code violation, that Allstate was found to have violated the Insurance Code or that Allstate has exhausted all appeals. Thus, we cannot conclude that section (b) of article 1.24D applies. Consequently, we agree that article 1.24D makes confidential the requested underwriting guidelines, with two exceptions. We do not believe this provision applies to underwriting guidelines that are voluntarily submitted to the department, that is, when the department does not request the submission of the guidelines. Nor does the provision apply to the underwriting guidelines of a county mutual insurance company. *See* Open Records Decision No. 653 (1997). However, the guidelines not covered by article 1.24D must be withheld from public disclosure as trade secrets. Allstate has established a prima facie case that its underwriting guidelines are trade secrets and entitled to protection from public disclosure under section 552.110 of the Government Code. *See* Open Records Decision No. 552 (1990); Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958), Restatement of Torts, § 757 cmt. b (1939) (containing six trade secret factors). We have marked the information accordingly.

Counsel for Allstate also argues that certain quarterly reports Allstate submitted to the department in compliance with Commissioner's Order No. 94-0466 are excepted from required public disclosure based on section 552.110 of the Government Code. The department does not raise the issue of the release of these reports, nor does the department submit the reports to this office for our consideration. Therefore, we question whether the department considers the quarterly reports to be at issue and suggest that the department ask the requestor to clarify whether she indeed seeks these reports. As the quarterly reports are not before us, we cannot rule on whether the act requires their public release at this time.¹

¹We note, however, that this office previously ruled on the public availability of the information in the quarterly reports. *See* Open Records Letter No. 96-0107 (1996). Presumably, the department has released the information in the reports in accordance with that letter. Generally, if a governmental body releases information to a member of the public, the act requires that governmental body to release the information to all members of the public who request it. Gov't Code § 552.007(b); *see* Open Records Decision No. 463 (1987); *but see* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply if governmental body releases confidential information). In light of the fact that this office recently adopted a new test for determining the applicability of the commercial and financial information branch of Government Code section 552.110, *see* Open Records Decision No. 639 (1996), Allstate is essentially asking this office to revisit its decision in Open Records Letter No. 96-0107 (1996), a task we decline to do at this time.

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 Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID#s 30374 and 104024

Enclosures: Marked documents

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