



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 16, 1997

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

OR97-1128

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 29384.

The Texas Department of Insurance (the "department") has received a request for information relevant to Retrospectively Rated Worker's Compensation or Casualty Insurance Policies. You contend that some of the requested information is not subject to the Open Records Act because the receiver is holding the records as an agent of the judiciary. You also contend that sections 552.107 and 552.112 except some of the information from required public disclosure.

We first address the department's claim that some of the records are records of the judiciary and, therefore, not subject to the provisions of chapter 552. See Gov't Code § 552.003(1)(B). In *El Paso Electric Co. v. Texas Department of Insurance*, 937 S.W.2d 432 (Tex. 1996), the Texas Supreme Court reversed a case previously relied upon by this office in reaching the conclusion that information held by a receiver of an insurance company is held on behalf of the supervising court. See Open Records Letter No. 96-0804 (1996). In *El Paso Electric*, the court concluded that, as the receiver is subject to removal by the State Board of Insurance (the "board"), the receiver's compensation remains within the board's control, and the receiver performs a public, regulatory function, the receiver is acting on behalf of the State Board of Insurance for purposes of chapter 105 of the Texas Civil Practice and Remedies Code, which allows a litigant to recover fees from a "state agency" in certain instances. *El Paso Electric Co. v. Texas Department of Insurance*, 937 S.W.2d at 436 (Tex. 1996). We assume, for purposes of this ruling, that all of the requested information was submitted to the Commissioner of Insurance in his capacity as receiver of specified insurance companies. Consequently, we conclude that the receiver does not hold the particular

requested information here on behalf of the receivership court but on behalf of the department. Therefore, the information is subject to the provisions of chapter 552. As you have not submitted the records you contend are records of the judiciary, and you do not argue that other exceptions may apply to the records, we are unable to determine whether the records are subject to required public disclosure.

You also contend that some of the requested records are excepted from disclosure under section 552.107. Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990). We have reviewed the documents that you contend are excepted from disclosure under section 552.107(1) and agree that you may withhold the records under that section.

You also contend that section 552.112 excepts some of the requested records from required public disclosure. Section 552.112(a) of the Government Code excepts from required public disclosure

information contained in or relating 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.

This exception may protect information that indirectly reveals the contents of examination, operating, or condition reports. *See* Open Records Decision No. 261 (1980) (conclusions of examination report of state bank). Information on the documents you submitted indirectly reveals information contained in or related to examination, operating, or condition reports. In addition, the department is a financial institution for purposes of section 552.112 of the Government Code. *See* Open Records Decision No. 158 (1977). We therefore conclude that the department may withhold the information pursuant to section 552.112 of the Government Code.

We are resolving this matter with an 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 should 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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

Ref.: ID# 29384

Enclosures: Submitted documents

cc: Ms. Lisa S. Gallerano
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201-4418
(w/o enclosures)

