



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 18, 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

OR97-1414

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# 106831.

The Texas Department of Insurance (the "department") has received a request for "any and all documents including, but not limited to, all lists and/or memoranda setting forth any and all pending litigation with which Insurance Corporation of America Houston Texas is involved." You contend that section 552.112 exempts the information from required public disclosure. You also contend that the requested information may be proprietary. Therefore, pursuant to section 552.305, you ask whether the department must release this information.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified the parent company of Insurance Corporation of America ("ICA"), PIE Mutual Insurance Company, of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Neither ICA nor PIE Mutual Insurance Company responded to our notification and consequently they have not established that the requested information can be withheld pursuant to section 552.110. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is

trade secret), 542 (1990) at 3. The department may not withhold the requested information under section 552.110.

However, the department also contends that section 552.112 excepts the requested records from required public disclosure.¹ 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 in the documents you submitted indirectly reveals information contained in or related to examination, operating, or condition reports. In addition, ICA 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ulg

Ref.: ID# 106831

¹In reaching our conclusion here, we assume that the "representative samples" 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). 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.

Enclosures: Submitted documents

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