



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1997

Mr. Frank Stenger-Castro
Vice President - Legal Affairs
The Facility Insurance Corporation
8303 Mopac Expressway North, Suite 310-A
Austin, Texas 78759

OR97-2466

Dear Mr. Stenger-Castro:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID#'s 110311, 110632, 110634, 111517, 111730, and 111732.

The Facility Insurance Corporation (the "corporation") received requests for various types of information under the Open Records Act. You assert that the corporation is not a governmental body and therefore is not subject to the Open Records Act (the "act").

Initially, with regards to ID# 110311, we note that because the Texas Workers' Compensation Insurance Fund (the "Fund") made its August 8, 1997 request for information under article 5.76-4(f) of the Insurance Code,¹ you do not consider it to be an open records request under the act. You seek a decision from this office as to the Fund's August 22, 1997 request under the act. Thus, this ruling only addresses your request for a decision as to the Fund's latter request for information.

The Seventy-fifth Legislature enacted House Bill 976 which provided for the privatization of the Texas Workers' Compensation Insurance Facility (the "Facility"). Act of June 1, 1997, H.B. 976, 75th Leg., R.S. You inform us that privatization occurred on August 21, 1997 when the Facility was converted from a nonprofit, unincorporated

¹Article 5.76-4(f) of the Insurance Code provides in relevant part that "[t]he fund and the Texas workers' compensation insurance facility may exchange information relating to actual or suspected fraud by any applicant, policyholder, claimant, agent, or insurer with respect to workers' compensation insurance policies issued by, or applications for coverage submitted to the facility or the fund. That information may be kept confidential and is not subject to disclosure under the open records act."

association to the Facility Insurance Corporation, a Texas stock property and casualty insurance company incorporated under chapter 2 of the Insurance Code. The corporation is vested with all of the Facility's property. *Id.* § 1.06(b). Each debt, claim, and cause of action of the Facility, and all property rights, privileges, franchises, and other interests of the Facility, remain the property of the corporation. *Id.* § 1.06(c). Each debt, liability, or duty of the Facility becomes a debt, liability, or duty of the corporation and may be enforced against the corporation as if it were incurred or contracted by the corporation. *Id.* § 1.06(e).

Prior to privatization, section 2.11 of article 5.76-2 of the Insurance Code expressly provided that the Facility is a governmental body only for purposes of the open records law. However, article 5.76-2 ceases to apply to the Facility on the date of conversion and does not apply to the corporation. *Id.* § 1.07; *see also id.* § 3.01(1) (repeals article 5.76-2 of Insurance Code). An exception to the repeal extends to causes of action or similar proceedings in which the Facility was a party and that are pending on the date of conversion. Such causes of action or similar proceedings continue to be governed by and conducted under article 5.76-2 as that article existed before its repeal. *Id.* § 1.06(f)(3); *see also id.* § 3.03 (repeal of article 5.76-2 does not affect rights and liabilities accruing under that article before effective date of House Bill 976, and that article is continued in effect). We think that the exception to the repeal is not applicable here since an open records request is not a cause of action or such similar proceeding. Accordingly, because of the repeal, we conclude that the Insurance Code does not subject the corporation to the Open Records Act.² However, our analysis does not end here. We must also determine whether the corporation is a governmental body under the Open Records Act, chapter 552 of the Government Code.

The Open Records Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in part, as

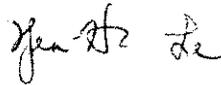
the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(1)(A)(x). You inform this office that the corporation is not supported in whole or in part by public funds, and no information has been submitted to this office to dispute this claim. Thus, we conclude that the corporation is not a governmental body for purposes of the Open Records Act and therefore is not subject to the act.

²We have reviewed the legislative history of House Bill 976, and it does not indicate that the legislature intended to subject the corporation to the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. With regard to future requests to the corporation, you may consider this ruling a previous determination under section 552.301(a) of the Government Code and need not request determinations from this office. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID#'s 110311, 110632, 110634,
111517, 111730, and 111732

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