

February 9, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Mr. Ryan Tredway, Staff Attorney
Legal and Compliance Division
Texas Department of Insurance
333 Guadalupe Street
Austin, Texas 78714-9104

OR99-0388

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121835.

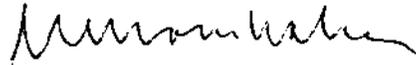
The Department of Insurance (the "department") received a request "for the most recent Texas Department of Insurance Triennial Audit of United Health Care of Texas." You seek to withhold the requested information under sections 552.101 and 552.112 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Article 1.15 of the Insurance Code provides for the triennial examination of insurance carriers by the department. Section 9 of the article provides that "[a] final or preliminary examination or report, and any information obtained during the course of an examination, is not subject to disclosure under the" Open Records Act. We have examined the "Examination Report" you submitted as responsive to the request. We conclude that it is made confidential by article 1.15, section 9. Accordingly, you must withhold the submitted information in its entirety. Since we have resolved this request under section 552.101 of the Government Code in conjunction with article 1.15, section 9 of the Insurance Code, we need not address your claim under 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 on as a

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

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker".

William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref.: ID# 121835

Enclosures: Submitted documents

cc: Ms. Suzanne Kelley
Humana, Inc.
P.O. Box 1438
Louisville, Kentucky 40201-1438
(w/o enclosures)



February 9, 1999

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR99-0389

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121838.

The City of Dallas (the "city") received a request for information from City Councilmember Laura Miller. Councilmember Miller requested copies of all legal opinions drafted by the Dallas city attorney's office that address the issue of conflict of interest in pending Love Field lawsuits. You claim that the requested information is excepted from disclosure under Government Code sections 552.101, 552.107(1), and 552.111. We have considered the exceptions you claim and reviewed the submitted information.

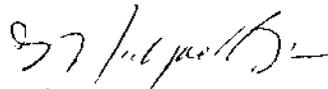
Initially, we recognize that the requestor is a member of the city council. This office has previously ruled that members of the governing body of a state or local governmental entity have an inherent right to examine the records of the governmental entity if they request access to the records in their official capacity. *See* Attorney General Opinion JM-119 (1983); Attorney General Letter Opinion No. 93-69 (1993). We note that the determination of whether a requestor is acting in an official capacity rather than as a member of the public involves the resolution of factual issues outside the scope of the open records process. *See* Open Records Decision Nos. 554 (1990), 552 (1990). We also note that an authorized official may review the city's records without implicating the prohibitions of section 552.007. If the councilmember's request is considered to be a request from a member of the public we shall consider your claimed exceptions.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by

a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have reviewed the subject documents and conclude that they constitute the legal opinion or advice of an attorney communicated in confidence to a client. Subject to any demonstrated special right of access, this information may be withheld pursuant to section 552.107 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 121838

Enclosures: Submitted documents

cc: The Honorable Laura Miller
City Councilmember
City Hall 5 F North
Dallas, Texas 75201
(w/o enclosures)