



February 18, 1999

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

OR99-0487

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122191.

The Texas Department of Insurance (“TDI”) received a request for information concerning Nationwide Insurance Company (“Nationwide”). You seek to withhold the requested information under sections 552.101, 552.110, 552.111, and 552.112 of the Government Code.

Section 552.112 exempts from required 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.” You note that prior decisions of this office have found that TDI was a “responsible agency” and that insurance companies were “financial institutions” within the scope of section 552.112. Open Records Decision No. 158 (1977). We have examined the materials for which you seek the protection of section 552.112 and conclude that you may withhold them under that section.¹

Section 552.101 of the Government Code requires withholding, *inter alia*, information made confidential by statute. You argue that portions of the requested information are confidential under article 1.24D of the Insurance Code. That provision states that “underwriting guidelines” are confidential, with certain exceptions which do not appear to apply here. We have examined the information you claim is made confidential by article 1.24D. We do not believe that all of the information for which you claim the protection of article 1.24D

¹You contend that the information for which you seek the protection of section 552.112 is also made confidential by article 1.15, section 9, of the Insurance Code. That provision makes confidential, with certain exceptions, “[a] final or preliminary examination report, and any information derived during the course of an examination.” Since we have permitted you to withhold the information in question under section 552.112, we need not address whether or to what extent article 1.15, section 9, of the Insurance Code might also protect this information.

consists of underwriting guidelines subject to that provision. *See* Open Records Decision No. 653 (1997). We have marked those portions of the information which must be withheld under article 1.24D.²

You also mark portions of the requested information as being subject to article 1.24B, section 7(a), of the Insurance Code. Those provisions make confidential “[i]nformation included in individual closed claim reports and individual summary claims reports submitted by insurers under [article 1.24].” You say that the information for which you seek the protection of article 1.24B, section 7(a), “is related to closed claim reports filed by Nationwide with TDI.” We do not believe that the provision in question covers all information “related” to closed claim reports. You may withhold under article 1.24B only the information which was “included in individual closed claim reports” submitted to TDI by Nationwide under the article.

You also invoke article 5.58(d) of the Insurance Code. Subsection (c) of the article requires that claim reports containing specified information be submitted to TDI “on each workers compensation claim.” Subsection (d) makes confidential “a social security number or any other information collected under Subsection (c) of this article which would disclose the identity of the claimant.” We agree that you may withhold under article 5.58(d) the identifying information you have marked in the information at issue.

Section 552.101 of the Government Code also protects information made confidential by judicial decision. You advise that TDI is prohibited from releasing a portion of the submitted information – quarterly market reports (“QMR”) – pursuant to court order.³ Based on your representations, we conclude that you may withhold the QMR materials under section 552.101.

Section 552.111 of the Government Code protects inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

²Nationwide was notified under section 552.305 of the Government Code of the request and submitted arguments that the “underwriting guidelines” were also protected under section 552.110 as trade secrets. Since we have permitted TDI to withhold, under article 1.24D of the Insurance Code, the portions of the submitted information we found to be “underwriting guidelines,” we need not address Nationwide’s section 552.110 claim.

³You indicate that the case in question is styled *Association of Independent Insurers, et al. v. Dan Morales*, cause number 97-09206.

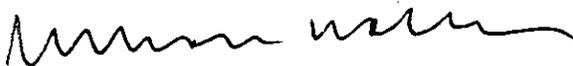
to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We have marked those portions of the information for which you claim the protection of section 552.111 that may be withheld under that section.

Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. We have marked the information you may withhold under section 552.107(1).

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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref:: ID# 122191

Enclosures: Marked documents

cc: Mr. Robert Brenner
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(w/o enclosures)