



May 25, 2000

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation
Insurance Fund
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR2000-2071

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136354.

The Texas Workers' Compensation Insurance Fund (the "fund") received a written request for the following categories of records pertaining to Magnolia Demolition, Inc.: 1) Pleadings file, 2) Investigative report, 3) Underwriting file, and 4) Premium audit file. You state that the records from the pleadings, underwriting, and premium audit files have been released to the requestor. However, you seek to withhold from disclosure the requested investigative reports, which you have submitted to this office as Exhibits 9, 10 (documents 1 and 3), 13, and 14. You explain that the information at issue was compiled and maintained by the fund's Special Investigations Division as part of investigations conducted under article 5.76-3 of the Insurance Code. Thus, you contend that the investigative reports are excepted from disclosure under section 552.101 of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information made confidential by specific statutes. You contend that the information at issue is made confidential under section 11A(b) of article

¹You also contend that the fund may refuse to release information related to the fund's underwriting guidelines, which you have submitted as Exhibit 15, pursuant to section 2(b) of article 5.76-3 of the Insurance Code. We understand that the fund wishes to exercise its discretion not to release the fund's underwriting guidelines at this time.

5.76-3 of the Insurance Code. Subsection (a) of section 11A provides that “[i]nformation maintained in the investigation files of the fund is confidential and may not be disclosed” except in four limited circumstances which are not applicable here. Subsection (b) of section 11A further provides that “Fund investigation files are not open records for purposes of the open records law, Chapter 552, Government Code.” Investigation file is defined to mean “any information compiled or maintained by the fund with respect to a fund investigation authorized by law.” Ins. Code art. 5.76-3, § 11A(d). After review of the submitted information and consideration of your representations to this office, we conclude that the fund must withhold this information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 11A(b) of article 5.76-3 of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

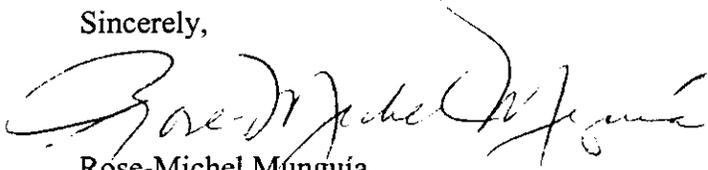
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguia". The signature is fluid and cursive, with a large initial "R" and "M".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/RWP/ljp

Ref: ID# 1363654

Encl. Submitted documents

cc: Mr. George W. Pain
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(w/o enclosures)