



May 26, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-2093

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 136484.

The Texas Department of Insurance received a request for copies of the monthly special deputy receiver reports filed in connection with the American Eagle Insurance Company. You contend that the Act does not apply to the requested information, or, in the alternative, some of the information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your claim that the Act does not apply to the requested information. You explain that the requested information is a record of a receivership estate created in accordance with article 21.28 of the Texas Insurance Code. You assert that the requirements of the Act do not apply to such records.

Article 21.28, section 11 of the Texas Insurance Code, in pertinent part, provides as follows:

(f) Open Records. Chapter 552, Government Code, *shall not apply to any records* of a receivership estate, or to the records of an insurance company prior to its receivership, held by the receiver or by a special deputy under this Article.

(emphasis added). *See also* Open Records Decision No. 610 (1992) (insurer's books and records held by receiver appointed pursuant to article 21.28 of the Insurance Code are records of the judiciary and, as such, are excepted from provisions of the Open Records Act). After reviewing the submitted information, we agree that the Act is not applicable. Therefore, you

have no obligations under the Act to disclose the requested information. Because article 21.28 is dispositive, we need not address your alternative claims.

This letter ruling is limited to the particular records at issue in this request and 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 that reads "Julie Reagan Watson". The signature is written in a cursive style with a long horizontal flourish at the end.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/nc/ljp

Ref: ID# 136484

Encl. Submitted documents

cc: Ms. Lisa Houston
Paralegal
Graves, Dougherty, Hearon & Moody
515 Congress Avenue, Suite 2300
Austin, Texas 78701
(w/o enclosures)