



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

September 18, 1990

Mr. A. W. Pogue
Commissioner
State Board of Insurance
1100 San Jacinto
Austin, Texas 78701-1998

OR90-449

Dear Mr. Pogue:

You have received two requests under the Texas Open Records Act, article 6252-17a, V.T.C.S., for information in your files on Texas Employers' Insurance Association (TEIA), a workers' compensation insurance company created by article 8308, V.T.C.S. Your letters of June 13, 1990, and June 26, 1990, forwarding this matter to us have been designated ID# 9832 and 9931.

Your letter of June 13, 1990, refers to us a request for the following information:

- (1) any and all Plans of Operation which have been prepared by TEIA's management, its Supervisors or Conservator, and
- (2) drafts or final copies of pleadings and memoranda relating to placing of TEIA into a court administered equity Conservatorship.

You do not submit pleadings for our review, although you refer to "the draft pleadings of a court-administered conservatorship" by one of your staff attorneys. You have cited no exception with respect to any such pleadings; accordingly, they are available to the requestor. See V.T.C.S. art. 6252-17a, § 3(c).

The documents that you submit as responsive to this request include intra-agency memoranda to and from the Counsel to the Conservator, intra-agency memoranda to and from the associate commissioner, and cash flow analyses for TEIA for 1990 to 1994. You raise section 3(a)(3), (4), and (10) with respect to all of these documents. You also raise 3(a)(11) with respect to the memoranda, and 3(a)(7) with respect to the memoranda communicating with the Counsel.

You state that TEIA is currently in conservatorship pursuant to an order of the commissioner. See generally Attorney General Opinion JM-1125 (1989). You also state that when a company is placed in supervision, the Conservation of Companies Division of the State Board of Insurance anticipates and prepares for the possibility of various hearings, including the compliance hearing automatically set at the time the Supervisory Order is issued. Based on this information, we believe that litigation in an administrative forum is reasonably anticipated. See Open Records Decisions Nos. 368 (1983); 301 (1982).

We have considered the application of section 3(a)(3) and have reviewed the documents submitted with your June 13, 1990, letter. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the information you submitted with your letter of June 13, 1990.

Your letter of June 26, 1990, forwards a request for the following information about TEIA:

(1) Any and all reinsurance agreements between TEIA and Employers Casualty Company, and

(2) copies of any audits and work papers related thereto performed on TEIA within the past twelve months.

You claim that all of these items are excepted from disclosure by section 3(a)(12) of the Open Records Act, which applies to

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities

An insurance company is a financial institution within this exception. Attorney General Opinion MW-411 (1981); Open Records Decision No. 158 (1977). Audits and work papers on TEIA, "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of" the State Board of Insurance, are excepted from disclosure by section 3(a)(12).

You state that the reinsurance agreements were collected during an examination of TEIA by the examination staff of the State Board of Insurance and the reinsurance agreements are related to and referred to in the reports issued by your staff. Thus, the agreements are within the literal language of section 3(a)(12). Moreover, in Open Records Decision No. 187 (1978), this office concluded that section 3(a)(12) was intended to promote and protect complete production of sensitive information by financial institutions to regulatory agencies. The decision concluded that a credit union's property development plans were within section 3(a)(12) because they gave detailed information about the credit union's condition and a particular investment it proposed. The reinsurance agreements also reflect the financial condition of the TEIA and are excepted from disclosure by section 3(a)(12) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-449.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

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Ref.: ID# 9832, 9931

Enclosure: Attorney General Opinion MW-411 (1981); Open Records Decisions Nos. 158, 187, 551

cc: George Joy
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