



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-572

Dear Ms. Sanchez:

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# 27325.

The Texas Department of Insurance ("the department") received a request for a certain legal opinion prepared for the department's insurance fraud unit during an investigation of New Era Life Insurance Company. The department seeks to withhold this opinion from required public disclosure based on sections 552.101 and 552.107(i) of the Government Code.

Section 552.101 of the Government Code exempts from required public disclosure information considered to be confidential by law. You raise section 5(a) of article 1.10D of the Insurance Code, which provides as follows:

Any information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena by another governmental entity, except a valid grand jury subpoena, until released for public inspection by the commissioner or, after notice and a hearing, a district court determines that the public interest and any investigation by the commissioner would not be jeopardized by obeying the subpoena.

If the commissioner asserts that certain information must remain confidential for any of the three reasons given therein -- "to complete the investigation, protect the persons under investigation from unwarranted injury, or serve the public interest" -- this provision deems such information confidential. Open Records Decision No. 608 (1992). The statute does not permit this office to question that assertion. *Id.* at 2.

Here, the legal opinion was acquired by the department and is relevant to an inquiry by the insurance fraud unit. Although you inform us that the fraud unit's investigation of this matter has concluded, Senior Associate Commissioner Mary Keller states that "it is reasonably necessary to withhold this legal opinion in order to serve the public interest." We, therefore, conclude that the requested legal opinion is confidential pursuant to section 5(a) of article 1.10D of the Insurance Code; the department must withhold the opinion based on section 552.101 of the Government Code.

Having determined that the department must withhold the requested information under section 552.101 of the Government Code, we need not address your claim under section 552.107(1). 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 contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MRC/rho

Ref.: ID# 27325

Enclosures: Submitted documents

cc: Bill S. Chen, FSA, Ph.D
President and Chief Executive Officer
New Era Life Insurance Company
P. O. Box 79326
Houston, Texas 77279-9326
(w/o enclosures)