



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-827

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# 29043.

On August 31, 1994, the Texas Department of Insurance (the "department") received a request for "a complete copy of the closed claim form filed by St. Paul Insurance Company for their claim number 591TD9116-63B311." The department requested an open records decision from this office on September 12, 1994, asserting that the requested information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 7(a) of article 1.24 of the Insurance Code.

Section 552.301(a) provides that:

A governmental body that receives a written request for information that it considers to be within one of the exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

The department did not raise section 552.101 of the Government Code within the ten-day period following the receipt of the open records request. Thus, the department failed to seek our decision within the ten-day period mandated by section 552.301(a).

When a governmental body fails to request an attorney general decision within ten days of receiving an open records request, the information at issue is presumed public. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380 (Tex. App.--Austin 1990, no writ). In order to overcome this presumption, a governmental body must provide compelling reasons as to why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The fact that information is made confidential by statutory law provides a compelling reason to overcome the presumption. *See Open Records Decision No. 150 (1977)*.

Information that is made confidential by statute must be withheld from required public disclosure under the Open Records Act. Gov't Code § 552.101; *see also id.* § 552.352 (providing penalties for release of confidential information). The department contends that the requested closed claim report is made confidential by section 7(a) of article 1.24B of the Insurance Code.

When a claim for recovery of \$25,000 or more under a liability insurance policy is closed, an insurer must file with the State Board of Insurance a closed claim report on a form prescribed by the board. *See Ins. Code art. 1.24B, § 2(a); see also id.* §§ 1(1) (defining liability insurance), (2) (defining insurer), 3 (describing content of closed claim report form). Section 7(a) of article 1.24B of the Insurance Code makes the information an insurer submits in these reports confidential:

Information included in individual closed claim reports . . .
submitted by insurers under this article is confidential and may not
be made available by the State Board of Insurance to the public.

Section 7(a) contains no exception for the release of the report to any person, such as the claimant, or for the release of the report for a particular purpose. Thus, the confidentiality of this provision extends to any member of the public and exists at all times. Moreover, section 7(b) of article 1.24B of the Insurance Code reiterates the protection of section 7(a) for closed claim reports:

Information included in the individual closed claim reports . . .
may be examined only by the members of the State Board of
Insurance, the commissioner of insurance, and the employees of the
State Board of Insurance.

Thus, we believe that section 7(a) of article 1.24B of the Insurance Code makes the requested closed claim report confidential. Therefore, we conclude the department must not release the report to any member of the public. *See Gov't Code § 552.101.*

Because the plain language of the statute resolves 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 our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29043

Enclosures: Submitted documents

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