



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

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

OR95-479

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# 31484.

The Texas Department of Insurance (the "department") received a request for information concerning the Arizona Premium Finance Company. You inform us that the department will release some of the requested information. You assert that portions of the requested information are excepted from required public disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.

Chapter 24 of the Insurance Code governs the regulation of insurance premium finance companies. Article 24.06(a) of that code authorizes the State Board of Insurance to make examinations or investigations to determine whether an insurance premium finance company holding a license issued by the State Board of Insurance is in compliance with chapter 24. You assert that portions of the requested information are made confidential by section 552.101 of the Government Code in conjunction with article 24.06(b) of the Insurance Code. Section 552.101 of the Government Code excepts from disclosure information that is confidential by law, including information deemed confidential by statute. Article 24.06(b) reads as follows:

All reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investigations, including any duly authenticated copy or copies of those reports in the possession of any licensee or

the board, are confidential communications, are not subject to subpoena, and may not be made public, except in connection with a hearing under Article 24.05 of this chapter and any appearance in connection with such a hearing. Information obtained in the course of these examinations or investigations may be made available to other governmental agencies when the information involves matters within the scope or jurisdiction of those agencies.

We believe that with the exception of the production of the information at an article 24.05 hearing, this provision makes confidential all reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investigations when such examinations or investigations are conducted pursuant to article 24.06(a) of the Insurance Code.

You enclosed representative samples of the information the department seeks to withhold from public disclosure. These samples contain two sets of documents, one of which contains an examination report, an examination report summary, and certain documents you have labeled as "sample workpaper." The examiner states in the examination report that the examination was made pursuant to article 24.06 of the Insurance Code and section 25.702 of title 28 of the Texas Administrative Code. We, therefore, conclude that the examination report is made confidential by article 24.06(b). Based on its content, we also believe that the examination report summary is a report of an examination conducted pursuant to article 24.06(a). We also conclude that if the "sample workpaper" documents were obtained during an examination or investigation conducted pursuant to article 24.06(a) of the Insurance Code, such documents are deemed confidential by article 24.06(b). Based on section 552.101 of the Government Code, the department must withhold from required public disclosure all information that is confidential under article 24.06(b) of the Insurance Code.

You have marked the other set of documents as excepted under sections 552.103, 552.107, and 552.111. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). In this instance you

have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The department may withhold the requested records pursuant to section 552.103.

We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We also note that the second set of documents contains an income tax return that is confidential by law and that consequently must not be released at any time. See Gov't Code § 552.101; 26 U.S.C. § 6103.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Having concluded that you may withhold the second set of documents pursuant to section 552.103 of the Government Code, we need not address your claims under sections 552.107 or 552.111. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. 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#31484

Enclosures: Submitted documents

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(w/o enclosures)