



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 5, 1995

Mr. Russell Oliver
General Counsel and Acting President
Texas Workers' Compensation Insurance Fund
100 Congress Avenue, Suite 300
Austin, Texas 78701-4042

OR95-1041

Dear Mr. Oliver:

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# 33859.

The Texas Workers' Compensation Insurance Fund ("the Fund"), established by article 5.76-3 of the Insurance Code, received a request for information on checks and warrants issued by each account of the Fund that have not been cashed or replaced. The requestor specifically asks for a combination of the following: check number, payee name, payee mailing address, issue date, and amount of check. You state that the Fund has checks and check information that would be responsive to this open records request and you have submitted lists containing information from checks issued for various purposes. You state that the Fund intends to make most of the requested information available to the requestor, but you believe that some of the information is excepted from disclosure by sections 552.101 of the Open Government Code, which prevents the public disclosure of "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and article 5.76-3, section 2(b) of the Insurance Code.¹ You believe that information from checks sent to the following persons are excepted from required public disclosure: individuals who have filed claims for workers' compensation insurance benefits with the Fund, employers who are insured with the Fund, and insurance agents who place business with the Fund. The information that the Fund wishes to withhold has been highlighted or otherwise identified on the lists you have sent.

¹You also claim that section 552.110 of the Government Code allows you to withhold some of the requested information.

The Fund is an insurer of last resort, established as a competitive state fund to provide an alternative assured market for workers' compensation. HOUSE COMM. ON INSURANCE, BILL ANALYSIS, Tex. H.B. 62, 72d Leg., 2d C.S. (1991); see Ins. Code art. 5.76-4. Section 2(b) of Insurance Code, article 5.76-3, provides as follows:

Except as otherwise provided by this subsection, the fund is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders.²

Act of May 16, 1995, 74th Leg., R.S., ch. 94, § 2, 1995 Tex. Sess. Law Serv. 882 (Vernon) (to be codified as Ins. Code art. 5.76-3, § 2(b)). Section 2(b) of article 5.76-3 recognizes that the Fund operates in the market place in competition with other workers' compensation insurers. See Ins. Code art. 5.76-3, § 2(g)³ (Fund has legal rights of a private person in this state). In your letter, you argue that checks issued to individuals who have filed claims for workers' compensation benefits constitute "information relating to claims" within section 2(b) of article 5.76-3, and you point out that the Fund's competitors are private insurance companies, which are not subject to the open records law. We agree with your reasoning and conclude that you may withhold checks issued to individual claimants.

You state that the Fund also sends checks to employers who are insured with the Fund and insurance agents who place business with the Fund. You argue that release of these checks, or check information identifying these employers and agents, would provide the Fund's competitors with a list of potential customers who are policyholders of the Fund.

In Open Records Letter No. 94-709 (1994), we concluded that the release of a list of all insurance agents who have placed business with the Fund would give advantage to the Fund's competitors. We also accept your argument in the case before us, that release of checks or check information identifying employers and insurance agents would also give an advantage to private competitors. Accordingly, you may withhold the checks containing this information.⁴

²In addressing this issue, we do not imply any construction of the language in section 2(b) of Insurance Code, article 5.76-3, concerning the board's authority to hold closed meetings.

³Act of May 16, 1995, 74th Leg., R.S., ch. 94, § 2, 1995 Tex. Sess. Law Serv. 882 (Vernon) (to be codified as Ins. Code art. 5.76-3, § 2(g) (renumbering section 2(e)).

⁴Since we have resolved this Open Records matter on the basis of article 5.76 of the Insurance Code and section 552.101 of the Government Code, we need not address section 552.110 of the Government Code.

We are resolving this matter with an 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 should 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,

A handwritten signature in black ink that reads "Susan L. Garrison". The signature is written in a cursive style with a large initial "S".

Susan L. Garrison
Assistant Attorney General
Open Records Division

SLG/rho

Ref.: ID# 33859

Enclosures: Submitted documents

cc: Mr. Peter Lawless
854 Massachusetts Ave., Suite # 10
Cambridge, Massachusetts 02139
(w/o enclosures)