



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

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

OR95-1453

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 35699.

The Texas Workers' Compensation Insurance Fund (the "Fund") received an open records request for the Fund's customer database information "including all fields." You contend that the information requested is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with article 5.76-3, § 2(b) of the Insurance Code. Additionally, you contend that section 552.104 of the Government Code excepts the requested information from required disclosure since release of the information would provide a competitive advantage to the Fund's competitors. You inform us that you have made the customer database from the Fund's START program, which includes the Fund's information on those policies, available to the requestor. You have submitted for our review a representative sample of the requested information.¹

Article 5.76-3, § 2(b) provides that the Fund may "refuse to release information relating to claims, rates, the Fund's underwriting guidelines, and other information that

¹In 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). 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.

would give advantage to competitors or bidders.” You note that in Open Records Letter 94-709 (1994), this office determined that, pursuant to section 552.101 in conjunction with article 5.76-3, § 2(b), the Fund was not required to release a list of all agents placing

business with the Fund since that information, if released, would give an advantage to competitors. You suggest that the request at issue relates to information that if released “strikes more directly at the heart of the Fund’s competitive posture than the request for the agent listing, as it would allow the Fund’s competitors to contact our customers directly for competitive purposes.” We agree that the release of the policy numbers as well as the names, addresses, and telephone numbers of the Fund’s customers could give advantage to the Fund’s competitors. Consequently, pursuant to section 552.101 of the Government Code in conjunction with article 5.76-3, § 2(b) of the Insurance Code, you may withhold these portions of the documents. We have marked the first page of the representative sample to reflect the portions of information that may be withheld pursuant to section 552.101 of the Government Code. The remainder of the information must be released to the requestor. Since your section 552.104 assertion would except the same information that we have determined may be withheld pursuant to section 552.101 in conjunction with article 5.76-3, § 2(b), we do not address your 552.104 argument.

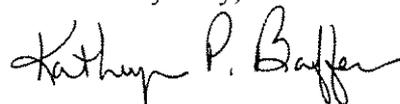
Finally, you state that the requestor has asked that the customer information requested be provided to him on “3.5 disk in ASCII format.” You note that the recent amendment to section 552.228 of the Government Code requires a governmental body to provide a copy of public information in a requested electronic medium if the governmental body has the technical ability to produce a copy of the information in the requested medium. *See* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. § 15, 5135 (Vernon) (to be codified at Gov’t Code § 552.228). You ask whether the Fund must produce a copy of the portions of the requested information that it must disclose in the medium requested pursuant to the amended version of section 552.228. We note that the changes regarding copying of information apply only to a request for information that is received by a governmental body on or after September 1, 1995. *See* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. § 26 (Vernon). Consequently, because the request at issue was received by the Fund before September 1, 1995, the prior law governs, and the Fund is not required to produce the information in the requested medium.²

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

²The Seventy-fourth Legislature has significantly amended chapter 552 of the Government Code effective September 1, 1995. *See* Act of May 29, 1995, 74th Leg., R.S. ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (to be codified at Gov’t Code ch. 552). We do not address in this ruling whether these recent amendments affect requests that are made on or after September 1, 1995.

determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/ch

Ref: ID# 35699

Enclosures: Submitted documents

cc: Mr. Norman Hines, C.I.C.
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(w/o enclosures)