



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Ms. Christine R. Rodriguez
Staff Attorney
Legal and Compliance MC 110-1A
Texas Department of Insurance
P.O. Box 14904
Austin, Texas 78714-9104

OR96-0904

Dear Ms. Rodriguez:

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# 35673.

The Texas Department of Insurance (the "department") received a request for the 1990 - 1994 financial statements and auditors' reports for four specified title companies. You indicate that the department does not have any documents responsive to the request for financial statements but that you do have material responsive to the request for auditors' reports. You have submitted a representative sample¹ of the auditor's report for review with the contention that the reports are excepted from required public disclosure under section 552.101 and section 552.112 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In this instance, the department claims that the requested information is excepted from required public disclosure under section 552.101 in conjunction with article 9.39 of the Insurance Code which states in pertinent part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Every title insurance company shall have an annual audit, at its expense, made of trust fund accounts for each county in which it operates in its own name and within ninety (90) days from the termination of its fiscal year shall send by certified mail, postage prepaid, to the Board one copy of such audit report . . . All such reports and analyses furnished by the title company to the Board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the Board. . . .

You mention the auditors' reports at issue were submitted in response to the foregoing statutory requirement and our examination of the representative sample does indeed reveal that it is an annual audit report which carries a certification that it meets all the applicable requirements of article 9.39 of the Insurance Code. In your correspondence to this office you maintain the audit reports in question are confidential and that the title insurance company seeking the information is not related to those about which it seeks information. The legislature's intent to except information from public disclosure denoted as analyses or reports constituting an annual audit in compliance with the Insurance Code's submission requirements is clear from the plain meaning of the statutory language. *See* Open Records Decision No. 501 (1988). If the commissioner asserts that particular, identified records must remain confidential under this provision, as your letter implies, this office is not permitted by the statute to go behind that assertion. In conclusion, you may withhold the auditors reports pursuant to section 552.101 of the Government Code in conjunction with article 9.39 of the Insurance Code and consequently, we need not reach the remaining issues you present under sections 552.101 and 552.112 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Janet L. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 35673

Enclosures: Submitted documents

cc: Marlene Adkison
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(w/o enclosures)