



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1997

Mr. William H. Kuntz, Jr.
Administrator
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR97-0996

Dear Mr. Kuntz:

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# 105262.

The Texas Real Estate Commission (the "commission") received a request for information filed with the commission under the Texas Residential Service Company Act, V.T.C.S. article 6573b. Specifically, the requestor seeks copies of the annual reports of Homeowners Association of America, Inc. ("Homeowners") for 1990 to date. The requested information includes financial statements and litigation summaries that you contend are excepted from disclosure pursuant to sections 552.101, 552.104, and 552.110 of the Government Code. You have submitted representative samples of the financial statements and litigation summaries to this office for review.¹ You state that you have released the remaining information to the requestor.

Pursuant to section 552.305 of the Government Code, we notified Homeowners of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. Homeowners notes that it is a subsidiary of Homeowners Group, Inc. and concedes that the consolidated financial statements for Homeowners Group, Inc. are available to the public. However, Homeowners contends that the "Balance Sheet and Profit and Loss

¹We 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.

Statement” that it provides to the commission on a quarterly and annual basis is excepted from public disclosure under sections 552.101 and 552.110 of the Government Code. Homeowners also contends that its litigation summaries are excepted from disclosure under sections 552.101 and 552.107 of the Government Code.

Both the commission and Homeowners contend that the information at issue is confidential by law. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 10 of article 6573b, V.T.C.S., provides as follows:

(a) Each service company shall annually, on or before the 1st day of April, file a report, verified by at least two principal officers, with the commission covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commission and shall include:

(1) a financial statement of the service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 7;

(3) the number of residential service contracts entered into during the year, the number of holders of contracts as of the end of the year, and the number of contracts terminating during the year; and

(4) such other information relating to the performance and solvency of the service company as is necessary to enable the commission to carry out its duties under this Act and such information shall be, to the extent legally permissible, confidential in nature and solely for the use of the commission.

V.T.C.S. art. 6573b, § 10. We agree that section 10(b)(4) makes the information at issue confidential. Therefore, the commission must withhold the information from disclosure under section 552.101 of the Government Code in conjunction with section 10(b)(4) of article 6573b, V.T.C.S.²

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

²Because the information at issue is confidential by law, we need not address the other arguments against disclosure that the commission and Homeowners have raised.

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

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 105262

Enclosures: Submitted documents

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