



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2011

Dear Ms. Keller:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108350.

The Texas Department of Insurance (the "department") received a request for information relating to Fidelity American Life Insurance Company ("Fidelity"). You assert that some of the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.112 of the Government Code. You cite to provisions of the Insurance Code, and you also claim that Fidelity may have a proprietary interest in some of the information at issue. Marked representative samples of the documents at issue were submitted to this office for review.¹

Pursuant to section 552.305 of the Government Code, this office informed Fidelity of the request. The company sent this office a letter in which it asserted that the information at issue is excepted from disclosure pursuant to article 1.15, section 9 of the Insurance Code. The department has marked the documents for which the department asserts article 1.15, section 9 of the Insurance Code, in conjunction with section 552.101 of the Government Code. We will address the applicability of article 1.15, section 9.

Section 552.101 of the Government Code 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. Article 1.15, section 9,

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 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.

of the Insurance Code makes confidential the examination reports and related work papers obtained during the course of an examination of a carrier. Ins. Code art. 1.15, § 9, Open Records Decision No. 640 (1996). You have marked the documents that you contend are made confidential under these provisions. We agree that the department must withhold from disclosure the documents that the department asserts fall within section 9 of article 1.15.²

You assert that some of the marked documents are excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. See Open Records Decision No. 574 (1990). Some of the information you marked as being protected under section 552.107(1) is from or to third parties outside the attorney-client privilege. We have marked the information that may be withheld under section 552.107(1).

You also noted that section article 1.24 of the Insurance Code is applicable to some of the information you have marked as protected under section 552.107 and 552.112. Article 1.24 provides:

The Board is authorized to address any reasonable inquiries to any insurance company or insurance agent, or to the holder of any permit, certificate of registration, or other authorization issued or existing under the authority or authorization of this code, in relation to the company's, agent's or holder's business condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the addressee to answer such inquiries in writing not later than the 10th day after the date the request is received. *A response made under this article that is otherwise privileged or confidential remains privileged or confidential unless or until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.*

(Emphasis added). However, you have not explained what other provisions of law make this information "privileged or confidential".³

²You contend that the department is entitled to rely on Open Records Decision No. 640 (1996) as a "previous determination" under section 552.301 of the Government Code. We note that Open Records Decision No. 640 (1996) is not a previous determination for records that are subject to section 9 of article 1.15. Thus, the department should seek a ruling from this office when it asserts that records are not subject to disclosure pursuant to this provision.

³We note that included in the information submitted to this office is an order of the Commissioner providing that some of the information was confidential, for at least a certain period of time, under section 3A of article 21.28A of the Insurance Code. Since you have not asserted that section 21.28A is applicable to these records, we assume the order is no longer applicable and, thus, we need not address the order.

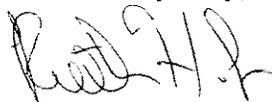
Section 552.112(a) excepts from public disclosure information "contained in or related to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). Open Records Decision No. 158 (1977) at 5-6. Section 552.112 focuses on "specific information generated during the regulation or supervision of financial institutions." Open Records Decision No. 483 (1987) at 9. Please note that section 552.112 does not cover all financial information, but rather generally extends only to information contained in or related to examination, operating, or condition reports prepared by or for TDI. Section 552.112 also protects information that may reveal information in a protected report. *Id.*

We agree that the examination, operating, or condition reports are protected under section 552.112. However, in reviewing other documents you marked as protected under section 552.112, this office was unable to determine whether such information was in fact related to a report.

We marked the documents that were clearly protected under section 552.112 and also marked documents to show what is protected under section 552.107.⁴ As to the remaining information, to the extent that the documents you marked as being excepted under section 552.112 are in fact related to protected reports, it may then be protected from disclosure under section 552.112. Otherwise, the remaining information for which you assert section 552.112 must be released.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: #108350

⁴We note that some of the documents in the different stacks are duplicates.

Enclosures: Marked documents

cc: Mr. Larry Parks
Long, Burner, Parks & Sealy
301 Congress, Suite 800
Austin, Texas 78701
(w/o enclosures)

Mr. Herbert Davis
601 West Fifth Street, Suite 800
Los Angeles, California 90071-2094
(w/o enclosures)