



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance
MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0162

Dear Mr. Tredway:

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# 112606.

The Texas Department of Insurance (the "department") received an open records request for "all documents pertaining to any administrative action taken by the Department of Insurance against Credit General Insurance Company." You state that the department will make some of the requested information available to the requestor. You seek to withhold other documents pursuant to sections 552.101, 552.107, 552.111, and 552.112 of the Government Code.

You have submitted to this office as responsive to the request a draft version of an examination report (with an attached response from representatives of Credit General), a "Request for Commissioner's Action" form, and a memorandum summarizing the findings of the examination report. You contend that these documents are excepted from required public disclosure pursuant to section 552.101 of the Government Code, which excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You explain that the department obtained information contained in these documents during the course of an examination of Credit General under the authority of section 9 of article 1.15 of the Insurance Code. Citing Open Records Decision No. 640 (1996) as authority, you contend that these records are confidential under section 9 of article 1.15 and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

We agree. In Open Records Decision No. 640 (1996), which replaced Open Records Decision No. 637 (1996), this office concluded that section 9 of article 1.15 makes confidential the examination reports and related work papers obtained during the course of an examination of a carrier that is not under liquidation or receivership. Assuming Credit General is not currently under liquidation or receivership, we conclude that the department must withhold these three documents pursuant to section 552.101 of the Government Code.

You have also submitted to this office a series of e-mails between one of the department's staff attorneys and a staff examiner. You contend these e-mails constitute privileged communications coming within the attorney-client privilege aspect of section 552.107 of the Government Code. Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.* After reviewing the communications, we conclude that the e-mails may be withheld in their entirety pursuant to section 552.107(1).¹

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/gle

Ref.: ID# 112606

Enclosures: Submitted documents

¹Because we resolve your request under sections 552.101 and 552.107(1) of the Government Code, we need not address the applicability of the other exceptions you raised.

cc: Ms. Cathy Bowser
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(w/o enclosures)