



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1998

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation
Insurance Fund
Legal Department
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR98-1233

Dear Ms. Nichols:

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# 114257.

The Texas Workers' Compensation Insurance Fund (the "fund") received a request for the following information regarding certain named fund managers "with which your fund has present and/or past dealings:"

- (1) Date of entering contractual agreement(s);
- (2) Date of cessation of contractual agreement(s), if any, and reasons for cessation of contract(s);
- (3) Performance/rate of return for each year under contract;
- (4) Original fee schedules; and
- (5) Reduced fee schedules, if any, and reasons therefor.

In addition the requestor asked for "a list of your Board members, their addresses, telephone and fax numbers." Because you do not address the requested list, we assume that the fund has released this information to the requestor. You state that the fund will make available to the requestor "information regarding the names of past investment firms with which the [f]und has contracted." However, you assert that the remaining information responsive to this request is protected from disclosure under section 552.101 in conjunction

with section 2(b) of article 5.76-3 of the Insurance Code.¹ You have submitted representative samples of the documents at issue to this office for review.²

We note initially that the fund is required to meet certain financial reporting requirements such as the requirement under section 17(a) of article 5.76-3 for public release of "an independently audited report analyzing the fund's activities and fiscal condition during the preceding fiscal year." *See also* Ins. Code art. 5.76-3, § 2(h) (annual report), § 9 (publication of rates and rating plan), § 13(i) (filing of annual statements). Thus, if any of the requested information has been made public under provisions of the Insurance Code, it may not be withheld from disclosure.³

Section 2(b) of article 5.76-3 of the Insurance Code provides that the fund is generally subject to the Texas Open Records Act and Open Meetings Act, but that the board of directors of the fund "may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders." You assert that release of the requested information would give advantage to the fund's competitors and that the fund thus may withhold the information from disclosure:

Like any insurance company operating in this state, the Fund must carefully choose its investment firms and options in order to maintain its financial viability; investment earnings are material to the overall *financial health of an insurer*. The Fund's financial program through the use of investments could be undermined by the release of information concerning its private investment firms. Our investment position and strategies could be scrutinized by our competitors, who could then adjust their own investment strategies accordingly, at the expense of the Fund.

The fund was created to (1) serve as a competitive force in the marketplace, (2) guarantee the availability of worker's compensation insurance, and (3) serve as an

¹In its initial brief, the fund also claimed an exception under section 552.110, which the fund has now withdrawn.

²We 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.

³We note that the requestor disputes the fund's contention that the requested information has not been released. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision No. 609 (1992).

insurer of last resort. Ins. Code art. 5.76-3, § 2(a). Revenue for the fund to accomplish these goals comes in part from the fund's investments and earnings from those investments. Ins. Code art. 5.76-3, § 13(a). We agree that the information requested by categories 3, 4, and 5 is protected under section 2(b) of article 5.76-3 as information that would give an advantage to competitors.

However, the names of the investment firms is not the type of information that is protected from disclosure by section 2(b) of article 5.76-3. You have not demonstrated how merely knowing the names of investment firms currently used by the fund would give an advantage to competitors. Nor have you demonstrated how disclosure of the dates of entering into and cessation of the contracts between the fund and the investment managers would give an advantage to the fund's competitors or bidders. Thus, you may not withhold from disclosure the type of information requested by categories 1 and 2 of the request under section 552.101.

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 114257

Enclosures: Submitted documents

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