



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1998

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

OR98-1669

Dear Ms. Nichols:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116754.

The Texas Worker's Compensation Insurance Fund (the "Fund") received a request for (1) the current Premium Audit Policy and Procedures Manual, (2) prior versions of the Premium Audit Policy and Procedures Manual, and (3) internal underwriting manuals. You submitted to this office for review the requested manuals, which you contend are excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ Section 552.101 of the Government Code excepts from disclosure information made confidential by law. You assert that section 2 of article 5.76-3 of the Insurance Code operates in conjunction with section 552.101 to protect the manuals from disclosure. Section 2(b) of article 5.76-3 provides:

Except as otherwise provided by this subsection, the fund is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board 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 the board refuses to release the manuals because the manuals relate to rates and underwriting guidelines and release of the manuals would give an advantage to

¹You seem to indicate that 552.103 of the Government Code may be applicable, since you refer to litigation involving the fund, but you do not cite this section as an exception to disclosure. We note that you should affirmatively assert the exceptions that you believe are applicable to the records at issue, as failure to do this may waive those exceptions. Gov't Code § 552.301 (governmental body must "state the objections that apply.")

the Fund's competitors. You explain that the Fund is involved in a competitive industry and that if the manuals were released, "[t]he Fund's underwriting guidelines and premium audit guidelines could be scrutinized by our competitors, who then could use the guidelines to try to undercut the Fund in the worker's compensation insurance marketplace." You also state that the manuals are "critical to the Fund's competitive position."

We have reviewed the records at issue and the Fund's arguments against disclosure. *See also* Open Records Letters Nos. 98-0904, 98-1233 (1998) (concerning Fund's functions and application of article 5.76-3). We agree that the requested manuals are protected from disclosure under section 2(b) of article 5.76-3 of the Insurance Code.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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 116754

Enclosures: Submitted documents

cc: Ms. Julie K. Lane
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(w/o submitted documents; w/copies of Open Record Letters Nos. 98-0904 and 98-1233)

²As we conclude that the manuals are protected from disclosure by section 2(b), we need not address the section 522.110 argument set forth by the fund. We note that section 552.104 is the exception that a governmental body can argue in support of protecting the governmental body's marketplace interests.