



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 7, 2003

Mr. Royce Poinsett
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2003-0110

Dear Mr. Poinsett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174624.

The Office of the Governor received a request for a copy of a legal memorandum from Sara Shiplet Waitt and "talking points" referred to in a September 29, 2002 email. The Governor's Office asserts that the requested memorandum is excepted from public disclosure under section 552.101 of the Government Code. Because the Governor's Office does not object to the release of the "talking points," we assume that this information has been released to the extent it exists. Gov't Code §§ 552.301, .302. We have considered the arguments submitted by the Governor's Office as well as those from the Texas Department of Insurance (the "department"). *See* Gov't Code § 552.304 (person may submit written comments stating reasons why information should or should not be released).

Section 552.101 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. The department explains that the memorandum from its senior associate commissioner is information related to the examination of entities regulated by the department, and therefore, is confidential under section 9 of article 1.15 of the Insurance Code. Under article 1.15, the department is required to visit each insurance carrier at least once every three years and examine its financial condition, ability to meet liabilities, and compliance with laws affecting the conduct of its business. Ins. Code art. 1.15, § 1; *see* Open Records Decision No. 640 (1996). In connection with this examination process, section 9 of article 1.15 provides:

A final or preliminary examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under the open records law This section applies if the carrier

examined is under supervision or conservation but does not apply to an examination conducted in connection with a liquidation or a receivership under this code or another insurance law of this state.

Open Records Decision No. 640 concluded that this provision makes confidential information the department represents to be work papers related to examination reports concerning a carrier that was not in liquidation or receivership. In Open Records Letter No. 99-1264 (1999), this office concluded that the department may rely on Open Records Decision No. 640 as a previous determination as to the protection afforded to information covered by section 9 of article 1.15, and the department need not ask this office for an open records ruling. The department has informed this office that the requested memorandum is a working paper obtained during the course of an examination under article 1.15. Thus, the memorandum is confidential under section 9 of article 1.15 of the Insurance Code.

The department transferred its confidential memorandum to the Governor's Office. This office has held that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies so as to effectively carry out the business of the state. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970). *But see* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities). Thus, the transferred memorandum remains confidential, and the Governor's Office must withhold it under section 552.101 of the Government Code in conjunction with section 9 of article 1.15 of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

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Enc. Submitted document

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