



The Attorney General of Texas

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JIM MATTOX
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002-6986
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

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Mr. Tom Bond
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Open Records Decision No. 368

Re: Availability under the
Open Records Act of information
from file on Insurance Board
investigation of licensee

Dear Mr. Bond:

A public hearing before the commissioner of insurance has been scheduled to determine whether the license of a particular insurance agent should be cancelled or revoked. See Ins. Code arts. 21.07; 21.14. A member of the news media has requested access to the investigative file which the State Board of Insurance has compiled on this agent. You have asked us to decide whether you may withhold this file until the public hearing is completed. You contend that sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act, article 6252-17a, V.T.C.S., are applicable in this instance.

Section 3(a)(3) excepts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In Open Records Decision No. 301 (1982), this office held that section 3(a)(3) is not limited to cases before the courts. There it was stated that:

[T]he section 3(a)(3) exception was designed to protect the interests of the state in adversary proceedings or in negotiations leading to the settlement thereof, and we have no doubt that 'litigation' encompasses proceedings conducted in

quasi-judicial forums as well as strictly judicial ones. 'Litigation' has been defined by the dictionary to include 'a controversy involving adverse parties before an executive governmental agency having quasi-judicial powers and employing quasi-judicial procedures.' . . .

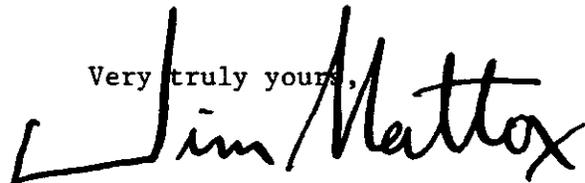
We believe the litigation exception may be applied to records relating to a contested case before an administrative agency.

At issue in Open Records Decision No. 301 were work papers prepared by staff accountants of the Public Utilities Commission in contemplation of a hearing before the commission on an ex parte application for a rate increase filed by Southwestern Bell. The opinion concluded that section 3(a)(3) could be invoked in this hearing, and that the work papers were relevant both to the hearing and to the judicial appeal that would likely be taken after the commission issued its order. Thus, it held that the work papers could be withheld from disclosure under section 3(a)(3).

In our opinion, an administrative hearing before the commissioner of insurance which may result in the cancellation or revocation of an insurance agent's license is no less an "adversary proceeding" than is an ex parte rate increase hearing before the Public Utilities Commission. If anything, it is more so. As this office noted in Open Records Decision No. 301, the state of Texas is not actually a "party" to an ex parte request for a rate increase, although the staff of the commission does serve in an adversary role during the hearing. In a license revocation or cancellation hearing, by contrast, the state clearly is a party.

We therefore conclude that there is presently pending before the commissioner of insurance "litigation" within the meaning of section 3(a)(3). We have examined the materials in question, and we conclude that they relate to this matter within the meaning of this section. Therefore, you may at this time deny this request for access to these materials.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

TOM GREEN
First Assistant Attorney General

DAVID R. RICHARDS
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Jim Moellinger
Bruce Youngblood