



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 12, 1989

Mr. A. W. Pogue
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Mr. Pogue:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5731; this decision is OR89-117.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The State Board of Insurance (SBI) received an open records request for several types of documents pertaining to particular insurance companies. You state that the SBI released much of this information to the requestor, but contend that subsections 3(a)(1), 3(a)(11), and 3(a)(12) of the Open Records Act protect other documents from public disclosure. You base your contention on prior open records decisions and ask that you be allowed to rely on those decisions to withhold the requested documents. After reviewing your arguments, this office agrees that you may withhold these documents pursuant to subsections 3(a)(1) and 3(a)(12).

You also contend that section 3(a)(1), pursuant to article 21.07, § 9(b) of the Insurance Code, protects from public disclosure cancellation notice letters that insurance

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companies send to the SBI when they cancel an agent's appointment. Section 9 provides:

(a) Every insurance carrier shall, upon termination of the appointment of any agent, immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon terminate the license of such agent to represent such insurance carrier in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record. (Emphasis added.)

The documents you seek to withhold are clearly the type of records described in section 9(a) of the Insurance Code; you should, therefore, withhold these documents from the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-117.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
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JSR/RWP/bc

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