



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

July 16, 1990

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

OR90-301

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# 6588.

The State Board of Insurance received a request for all documents, correspondence, and memoranda relating to two insurance companies: Allied Speciality Insurance and T.H.E Insurance Company, both of which were under investigation by the board. The requestor is the attorney for the insurance companies. You submitted three groups of documents which you seek to withhold: inter-agency memoranda you seek to withhold under 3(a)(11); drafts of pleadings prepared by the board's attorney you seek to withhold under section 3(a)(7); and copies of insurance policies issued by the companies that you seek to withhold under section 3(a)(4) of the act.

The requestor amended his request to reflect his intent not to seek access to any records provided by the companies to the board. Since the request does not cover insurance policies provided by the companies, it is unnecessary to address your argument under section 3(a)(4).

Section 3(a)(7) incorporates the attorney client privilege. It protects the work product of the staff attorney. See Open Records Decision No. 462 (1987). The drafts of pleadings prepared by the board's staff attorney for the assistant attorney general representing the agency as well as a memo stating the staff attorney's legal strategy may therefore be withheld. Cf. Open Records Decision No. 547 (1990).

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decisions No. 464 (1987); 239 (1980).

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). We have marked those portions of the inter-office memoranda that you may withhold pursuant to section 3(a)(11). The memorandum from Georgia Flint to Pearl Mays-Taborn may be withheld. Portions of the memorandum from Jimmy Clark to Sandra Autry may be withheld as marked. We have marked the last paragraph of one of the letters from Surplus Lines Stamping Office of Texas that contains recommendation that may be withheld under section 3(a)(11); the remainder must be released. The letter from Hass-Wilkerson-Wohlberg to the Surplus Lines Stamping Office is not excepted under section 3(a)(11) and must be released. None of the other information you have submitted is excepted under section 3(a)(11).

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 OR90-301.

Yours very truly,

*David A. Newton (by s.g.)*

David A. Newton  
Assistant Attorney General  
Opinion Committee

DN/mc

Ref.: ID# 6588, 6603, 6876, 7039, 7368

cc: Mr. Mark W. Eidman  
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