



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

September 18, 1990

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

OR90-451

Dear Mr. Pogue:

You ask whether the records of a particular insurance agency are subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. You received a request from David Horton for records about agent Alicia Mar. You referred this matter to us by your letter of April 23, 1990, which was designated ID# 9455.

The file includes a letter from Golden Rule Life Insurance Company discussing the reasons why Golden Rule terminated Ms. Mar's contract. You claim this letter is excepted from disclosure by article 21.07-1, section 11 of the Insurance Code, as incorporated by section 3(a)(1) of the Open Records Act. Section 11 of article 21.07-1 requires a legal reserve life insurance company, upon termination of the appointment of a life insurance agent, to file certain information about the termination with the Life Insurance Commissioner. Subsection 11(b) provides as follows:

Any information, document, records or statement required to be made or disclosed to the Commissioner pursuant to this Section 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.

A pending request for an Open Records Decision, RQ-1967, involves a question of interpreting section 11(b) of article 21.07-1. For that reason, we will not address article 21.07-1 in the context of this request at this time. You may withhold the letter from Golden Rule Life until a decision is issued in response to RQ-1967.

You maintain that section 3(a)(3) permits you to withhold the rest of the file. The agent is being investigated, and a hearing may be held arising from complaints made about her. Under the circumstances, litigation in an administrative forum may be anticipated. See Open Records Decision Nos. 368 (1983), 301 (1982).

We have considered this exception and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information. If the information becomes available to Ms. Mar through discovery or otherwise, section 3(a)(3) will no longer apply.

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 OR90-451.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 9455

Enclosure: Open Records Decisions Nos. 301, 368, 551

cc: Karen J. Cox
State Board of Insurance

David Horton
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