



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1991

Mr. Philip W. Barnes
Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR91-549

Dear Commissioner Barnes:

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# 13812.

You have received a request for information relating to a pending investigation of an individual who allegedly violated state insurance laws. Specifically, the requestor seeks:

- (1) information pertaining to the background of these complaints [against the individual under investigation],
- (2) his status with the State Board of Insurance, (3)
- status of any litigation or licenses he presently holds in Texas.

You claim that the requested information relates to an ongoing investigation for which a disciplinary hearing date has been set and that the requested information is thus excepted from required public disclosure by section 3(a)(3). You also claim that some of the requested information is excepted from required public disclosure by the attorney-client privilege, as incorporated by sections 3(a)(1) and 3(a)(7) into the Open Records Act, and by section 3(a)(11).

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 551 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Parties to a lawsuit must obtain relevant information through the normal process of discovery. *Id.* You advise us that a contested administrative case will result from your investigation. Open Records Decision No. 368 (1983) held that "the litigation exception may be applied to records relating to a contested case before an administrative agency." You have demonstrated that the requested information relates to the anticipated litigation. Accordingly, unless the information requested has already been disclosed through the discovery process or by court order, you may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. As we resolve your request under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), and 3(a)(11) at this time.

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 OR91-549.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/lcd

Ref.: ID#s 13812, 13978

cc: Mr. Roland Stewart, III
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