



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1991

Ms. Georgia Flint
Acting Commissioner
Texas Department of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR91-650

Dear Commissioner Flint:

Your predecessor in office asked 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# 12307.

The Texas Department of Insurance (the department) has received a request for information relating to a certain insurance company. Specifically, the requestor seeks "public information held by the [department] with respect to PBIC [Professional Benefits Insurance Company]," including all information in the possession of the Conservation of Companies Division and the Financial Auditing Unit. The department has made some of the requested information available but claims that the remainder is excepted from required public disclosure by sections 3(a)(4), 3(a)(7), 3(a)(11), and 3(a)(12) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991) at 2. Often, our office has applied section 3(a)(4) to information regarding bidding situations prior to the time a governmental body awards a contract. *See, e.g.*, Open Records Decision Nos. 541 (1990) at 4-5; 232 (1979); 75 (1975). To successfully claim a section 3(a)(4) exception, the governmental body must demonstrate the possibility of some specific harm in a particular competitive situation. Open Records Decision No. 593.

You contend the release of information relating to PBIC that the department collected would give an advantage to the company's competitors. You have not indicated, however, how release of such information might harm the department's interests in a particular competitive situation. Accordingly, you may not except the requested information under section 3(a)(4) of the Open Records Act.

You also claim that the requested information is excepted from required public disclosure by section 3(a)(7), which protects

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

Section 3(a)(7) protects communications from the attorney to the client only to the extent that such communications reveal the attorney's legal opinion or advice. Basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *See Open Records Decision Nos. 574 (1990) at 3; 462 (1987) at 13-14.* In addition, information communicated from the client to his attorney that reveals client confidences also may be excepted from required public disclosure under section 3(a)(7), provided such communications are not merely factual. Much of the information contained in the representative samples submitted to us for review includes legal opinion communicated from attorney to client or client confidences; therefore it is excepted from required public disclosure by section 3(a)(7) of the Open Records Act. For your convenience we have marked such information, which may be withheld from required public disclosure. The remainder of the information, however, may not be excepted under section 3(a)(7).

Next, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. *Open Records Decision No. 464 (1987) at 2-3.* However, *facts and written observations of fact that are severable from material excepted*

under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990) at 4. Some of the requested information contains the type of information excepted from required public disclosure under section 3(a)(11). Because both sections 3(a)(7) and 3(a)(11) protect advice, opinion, and recommendation, protection under section 3(a)(7) may overlap with protection under section 3(a)(11). See Open Records Decision No. 574 at 2. We have marked the information that may be withheld under section 3(a)(11).

Finally, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(12). Section 3(a)(12) excepts from disclosure

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act.

Open Records Decision No. 158 (1977) at 5-6 held that insurance companies are included within the term "financial institutions" for purposes of section 3(a)(12). We have examined the documents submitted to us for review for which you claim the section 3(a)(12) exception. We conclude that this information is clearly excepted from required public disclosure by section 3(a)(12) of the Open Records Act and may be withheld.

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 OR91-650.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/lcd

Ref: ID# 12307
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