



Office of the Attorney General
State of Texas

May 14, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Jeff Hankins
Legal Assistant, Program Division
Legal Services 110-1C
Texas Dept. of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR92-229

Dear Mr. Hankins:

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# 15375.

The Texas Department of Insurance received an open records request for "all records pertaining to complaints made" against two particular insurance companies. You contend the requested information comes under the protection of section 3(a)(3) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). You inform us that

[t]he information sought to be exempted from disclosure relates to an ongoing investigation of one of the ... [insurance] companies for alleged violations of state insurance laws. The agency has already sent its notice of intent to institute disciplinary action against the company.

The documents that you have submitted to this office for review clearly demonstrate that the department is pursuing disciplinary action against U.S. Fire Insurance Company (U.S. Fire) for violations of article 5.58 of the Texas Insurance

Code. Further, it is apparent to this office that documents submitted to this office "relate" to the pending litigation.

This does not, however, end our discussion of the applicability of section 3(a)(3). We note that most of the records submitted to us consist of correspondence, and accompanying attachments, between the department and U.S. Fire. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent that the department's files consist of records that are also held by U.S. Fire, there is no justification for now withholding that information from the requestor pursuant to section 3(a)(3). Accordingly, the department must release all such records. Otherwise, this office agrees that the requested documents come under the protection of section 3(a)(3) until such time that the information is provided to the opposing party during the discovery process or until the litigation concludes.

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 OR92-229.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/RWP/lmm

Ref.: ID# 15375
ID# 15529

cc: Ms. Jean Coyle
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