



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1992

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

OR92-248

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), article 6252-17a, V.T.C.S. Your request was assigned ID# 15670.

On April 1, 1991, Philip Barnes, then Commissioner of Insurance, issued a directive to all companies writing workers' compensation coverage in Texas and their affiliates, ordering the companies to submit certain information to the Department of Insurance (the department). Based on the information the department received pursuant to the April 1, 1991, directive, the department instituted investigations of some of the insurance companies for alleged violations of state insurance laws. The department has advised that these investigations are ongoing. Further, the department has advised that it has sent out notices to institute disciplinary action against certain of the insurance companies, and has requested further detailed information from the insurance companies.

Recently, the department received a request for information relating to the results of the April 1, 1991 directive. Specifically, the requestor asks for the names of the companies that allegedly are violating state insurance code provisions. You have submitted to us copies of documents the department has received as part of its ongoing investigations. You believe these documents respond to the request. You claim that section 3(a)(3) of the act exempts all of the documents from required public disclosure, and that section 3(a)(1), (7), and (11) except some of the documents from required public disclosure.

First, as we have stated, the requestor only asks for the names of the companies that allegedly are violating state insurance laws. Governmental bodies need not prepare answers to questions. Open Records Decision No. 555 (1990) at 1. On the other hand, a governmental body must make a good faith effort to relate a request to information the governmental body holds. Open Records Decision No. 561 (1990). However, while we note that the documents the department has submitted as responsive to the request reveal the identities of the companies the department is investigating and thereby answer the requestor's question, we do not understand the requestor to seek any information other than the identities. Thus, we question whether the requestor seeks the release of all of the information you claim is responsive to the request.

Assuming that the documents are responsive to the request, however, we will consider the exceptions you have claimed. Section 3(a)(3) of the act excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

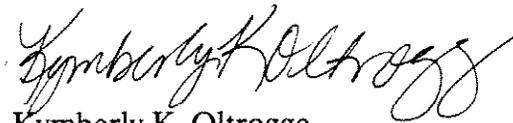
Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990) at 4. The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA), V.T.C.S. article 6252-13a. Open Records Decision No. 588 (1991) at 7.

Article 1.33A of the Insurance Code provides that the department is generally subject to APTRA. You advise that the attorney responsible for reviewing this matter has determined that the information you claim the requestor seeks is directly related to the anticipated disciplinary actions, which are contested administrative cases subject to APTRA. Accordingly, we conclude that the department may reasonably anticipate litigation, and that the documents you have submitted are relevant to the litigation. Thus, the department may withhold the

documents from required public disclosure under section 3(a)(3). Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(1), (7), or (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 OR92-248.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KO/lmm

Ref: ID# 15670
ID# 15776

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