



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1992

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

OR92-311

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# 15896.

The Texas Department of Insurance (the "department") has received a request for information relating to an investigation of an insurance agent. Specifically, the requestor seeks information regarding three complaints filed with the department against Kenneth Lloyd Neathery. You claim that the requested information relates to anticipated litigation with the insurance agent and is therefore excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that portions of the requested information are excepted by sections 3(a)(1) and 3(a)(11).

Section 3(a)(3) 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). When parties to litigation have been provided with the information at issue, section 3(a)(3) does not protect it from further disclosure. Open Records Decision No. 493 (1988) at 2. Accordingly, the letters dated February 14, 1988, April 10, 1989, April 19, 1989, February 26, 1991, March 18, 1991, and April 2, 1991, and the petition in bankruptcy filed by Mr. Neathery and his wife, which have clearly been made available to the party to the anticipated litigation previously, may not be withheld from required public disclosure under the Open Records Act and must be released.

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 Nos. 588 (1991); 368 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

Article 1.33(a) of the Insurance Code provides that the department is generally subject to APTRA. You advise us that the requested information relates to an investigation of an insurance agent and that the department anticipates that the investigation will culminate in a contested administrative case subject to APTRA with the named agent as a party. Accordingly, we conclude that litigation may be reasonably anticipated. You indicate that the attorney representing the department has determined that the requested documents relate to the anticipated litigation. We agree. With the exception of the documents addressed above, the information may therefore be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. 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 sections 3(a)(1) 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 OR92-311.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 15896
ID# 15976

cc: Ms. Dana L. Gribble
Research Specialist
Profiles Plus, Inc.
350 Alt. 19, Suite C
Palm Harbor, Florida 34683