



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 7, 1992

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

OR92-426

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# 16296.

The Texas Department of Insurance (the "department") received an open records request for all documents in its files on licenses issued by the department to a particular insurance agent, including records regarding any disciplinary, administrative or revocation proceedings instituted against the agent. You have submitted to this office for review what you consider to be representative samples of the requested information that you contend come under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(7) of the Open Records Act.

You first contend that a memorandum dated May 27, 1992 from one staff attorney to another may be withheld pursuant to the attorney-client privilege as incorporated in sections 3(a)(1) and 3(a)(7) of the act. Although you raise the attorney-client privilege in the context of section 3(a)(1), this privilege is more properly deemed to be an aspect of section 3(a)(7) of the act, which protects, *inter alia*, "matters in which the duty of . . . 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." See Open Records Decision No. 574 (1990) (copy enclosed). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* The memorandum at issue does not contain any legal advice or opinion, nor does it appear to consist of a privileged communication for purposes of section 3(a)(7). Unless you can demonstrate to this office

within seven days of the date of this letter how this memorandum constitutes a privileged communication, the commission must release this memorandum.

You contend that the remaining documents may be withheld pursuant to section 3(a)(3) because they relate "to an ongoing investigation by this agency of the . . . agent for alleged violations of state insurance laws." Section 3(a)(3) protects

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.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have made clear that these documents "relate" to a disciplinary action the commission intends to pursue against the agent pursuant to article 1.10 of the Insurance Code.

This does not, however, end our inquiry as to the applicability of section 3(a)(3). We note that some of the documents you seek to withhold pertain to the agent's criminal conviction for violations of article 21.07A of the Insurance Code. These documents consist of what appear to be the criminal complaint, the criminal information filed pursuant to article 21.20 of the Code of Criminal Procedure, a "Probable Cause Affidavit" submitted to the magistrate for the issuance of a summons, an affidavit executed by the defendant/agent, and the court's record of the judgment and sentence. Court records of criminal trials are specifically made public by article 1.24 of the Code of Criminal Procedure. Records specifically made public by statute may not be withheld pursuant to section 3(a)(3). *See id.* at 2 and authorities cited therein. Accordingly, all of the requested criminal court records must be released.

On the other hand, you also seek to withhold documents that consist of handwritten notations concerning the commission's disciplinary action against the insur-

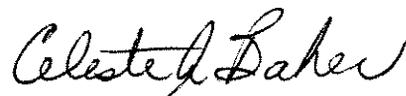
ance agent. We agree that this document may be withheld pursuant to section 3(a)(3).

We note, however, that once information has been obtained by all parties to the litigation, there generally exists no section 3(a)(3) litigation interest with respect to that information. Open Records Decision Nos. 349, 320 (1982). In this regard we note that two of the three pieces of correspondence that you seek to withhold consist of correspondence between the commission and the insurance agent or his attorney; section 3(a)(3) does not protect these documents. Accordingly, the department must release the two pieces of correspondence between the commission and the insurance agent or his attorney dated February 7, 1992 and March 6, 1992.

However, as noted above, section 3(a)(3) also protects information relating to "settlement negotiations." A settlement offer is attached to the third piece of correspondence, which also contains a reference to the offer. Because this document pertains to on-going settlement negotiations, it may be withheld at this time pursuant to section 3(a)(3).

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 OR92-426.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/lmm

Ref.: ID# 16296
ID# 16357

Enclosure: Open Records Decision No. 574

cc: Mr. Paul C. Watler
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(w/o enclosures)