



Office of the Attorney General
State of Texas

November 4, 1992

DAN MORALES
ATTORNEY GENERAL

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

OR92-636

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# 15547.

The Texas Department of Insurance received an open records request for "information about the complainant" in a matter involving an unlicensed individual holding himself out to be a "risk manager." You contend the requested information comes under the protection of section 3(a)(3) and the informer's privilege aspect of section 3(a)(1) of the Open Records Act.

The "informer's privilege" aspect of section 3(a)(1) protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988); 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

In this instance, the department based its investigation of the individual in question, at least in part, on the allegations of one or more complainants. Section 2 of article 21.14-1 of the Insurance Code provides:

A person may not act as or hold himself out to be a risk manager in this state unless the person meets the requirements of this article and rules of the board and is licensed by the board.

Section 14 of article 21.14-1 further provides:

(a) A person commits an offense if the person violates Section 2 of this article.

(b) An offense under this section is a Class C misdemeanor.

Because the complainant's allegations constitute the report of a violation of law carrying criminal penalties, we conclude that the complainant's name, and other information tending to identify the complainant, may be withheld pursuant to the informer's privilege aspect of section 3(a)(1).

We note, however, that the records containing the privileged information contain other information not protected by the privilege. Similarly, other documents that you submitted to this office, although making reference to the complainant, do not contain information tending to reveal the complainant's identity. Such information does not come under the protection of the informer's privilege and accordingly may be withheld only if section 3(a)(3) is applicable. 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

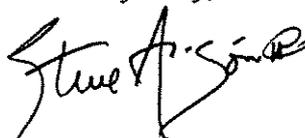
the requested information relates to current litigation involving the above-named individual. While the contested case hearing has been recently completed, a decision in the case has not been reached, and new evidence will be introduced into the record by agency staff.

You have demonstrated to this office that the department is involved in a contested case hearing concerning violations of article 21.14-1 of the Texas Insurance Code. Such an action constitutes litigation for purposes of section 3(a)(3). Cf. Open Records Decision No. 588 (1991). Further, it is apparent to this office that documents coming within the ambit of the open records request "relate"

to the pending litigation.¹ Assuming that the department did not release these documents during discovery, *see* Open Records Decision Nos. 349, 320 (1982), this office concludes that you may withhold these records 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 OR92-636.

Yours very truly,



Steve Aragón
Assistant Attorney General
Opinion Committee

SA/RWP/lmm

Ref.: ID# 15547
ID# 15675

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¹You have also submitted documents to our office that fall outside the scope of the open records request. This letter ruling does not address the public nature of these documents.