



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 25, 1993

OR93-015

Ms. Georgia D. Flint
Commissioner of Insurance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Dear Commissioner Flint:

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# 16998.

The Texas Department of Insurance (the department) received an open records request for "information contained in the advertising files for Transport Life Insurance Company and Pioneer Life Insurance Company for the years 1988, 1989, 1990, 1991 and 1992." You state that the requested records pertaining to Transport Life Insurance Company consist of materials in the possession of the Insurance Fraud Unit of the Department of Insurance. Section 5(a) of article 1.10D of the Insurance Code provides that materials "acquired by the department [and] relevant to an inquiry by the insurance fraud unit" are not public records "for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest."

In enacting section 5(a) of article 1.10D, the Legislature chose to grant the Commissioner, rather than the Attorney General, the authority to decide if the requested information is confidential. You have deemed the documents at issue in this request as confidential in accordance with section 5(a). Accordingly, such materials are confidential, and are exempt from disclosure under section 3(a)(1) of the Open Records Act.

You contend that the department's records concerning Pioneer Life Insurance Company constitute "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure.

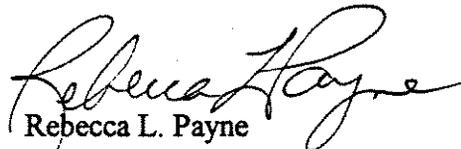
For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Department of Public Safety v. Gilbreath*, No. 3-92-024-CV (Tex. App. -- Austin, November 25, 1992, n.w.h.), the Third Court of Appeals recently

held that §3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath* at 7. The court has since denied a motion for rehearing this case.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. In the meantime, we are returning your request to you and asking that you once again review the information pertaining to Pioneer Life and your initial decision to seek closure of this information. We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review, you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11) or any other exception that you have previously raised. You must submit these materials within 15 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision. If you do not timely resubmit the request, we will presume that you have released this information.

If you have questions about this ruling, please refer to OR93-015.

Yours very truly,


Rebecca L. Payne
Assistant Attorney General
Opinion Committee

RLP/JET/rwp/lmm

Ref.: ID# 16998
ID# 17062

Enclosures: Submitted documents

cc: Ms. Sally Starnes
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(w/o enclosures)