



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 8, 1993

Mr. Jeff Hankins
Legal Assistant, Regulated Lines Section
Legal Services, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-063

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 18597.

The Texas Department of Insurance ("the department") received an open records request for three items of information. You say that with the exception of the "Form TWCC 20" files, the department does not have the information requested in item one. The other two items requested include information regarding certain complaints of excessive premium charges and a "record of any disciplinary or violation notice or other action taken against any workers' compensation insurance company . . . [for] excessive and/or wrongful premium charge . . . under a voluntary or open market statutory workers' compensation insurance policy in force during . . . 1989, 1990, or 1991 (through April 30, 1991)." You contend that the department may withhold items one and two based on sections 552.103, 552.107, and 552.111 (former sections 3(a)(3), 3(a)(7), and 3(a)(11)) of the Open Records Act.

To secure the protection of section 552.103, 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

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

contend that the requested information relates to anticipated disciplinary actions. You cite Open Records Letter No. 92-248 (1992), in which this office concluded that under former section 3(a)(3) the department may withhold certain documents since they related to anticipated disciplinary actions. The information at issue here relates to the same disciplinary actions the department anticipated in Open Records Letter No. 92-248 (1992).

Section 552.103 does not apply when the opposing party to the anticipated litigation (in this case, the anticipated disciplinary actions) has seen or had access to the requested information. Open Records Decision No. 349 (1982). Since the opposing party in each anticipated disciplinary action has seen the notice of the department's intention to institute disciplinary action, you may not withhold such notices based on section 552.103 of the Open Records Act.

You sent no copies of the complaints requested in item two. Nor do you raise exceptions to the release of these complaints. We assume the department is providing access to the requested complaints.

You provided several documents that you also contend are exempt from required public disclosure under section 552.111, as attorney work product. You sent additional documents that you contend are exempt under section 552.111, as attorney work product and party communications prepared subsequent to the occurrence of the event upon which the litigation is based and under section 552.107, as within the attorney-client privilege.

The attorney work product doctrine is an aspect of section 552.103, the litigation exception. *See* Open Records Decision No. 574 (1990) at 6. You have demonstrated that litigation which relates to this information is reasonably anticipated. You may therefore withhold pursuant to section 552.103 the information that relates to the anticipated disciplinary actions. This information consists of handwritten notes of attorneys involved in the disciplinary actions and two memoranda from attorneys.²

The protection for attorney-client communications under section 552.107 extends to information that contains client confidences and attorney advice, opinion or recommendation rendered to the client or to an associated attorney. Open Records Decision No. 574 (1990). We have marked the documents that you may withhold under section 552.107.

²In reaching our conclusion under section 552.103, we assume, of course, that the opposing party to the litigation has not previously had access to the records at issue. *See* Open Records Decision Nos. 349, 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 contact this office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 18597

Enclosures: Submitted documents

cc: Mr. Jerry Fazio
Dodge Associates, P.C.
3102 Oak Lawn Avenue
Suite 1000, L.B. 150
Dallas, Texas 75219
(w/o enclosures)