



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1993

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

OR93-315

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# 18885.

The Texas Department of Insurance (the "department") has received a request for copies of complaint files involving Ohio Indemnity Insurance Company and American Autoplan. You have submitted representative samples of the requested information to us for review and claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the open Records Act.

Section 3(a)(1) of the Open Records Act excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The commissioner is granted certain discretion under article 1.10D, section 5(a) of the Insurance Code to declare "[a]ny information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit . . . not a public record." If the commissioner asserts that particular, identified records must remain confidential for any or all of the three statutory reasons given. *See* Open Records Decision No. 608 (1992). In the instant case, the commissioner has asserted that the materials sought regarding Ohio Indemnity Insurance Company are relevant to an ongoing investigation of that company by the insurance fraud unit. Such materials are therefore subject to the confidentiality provisions of article 1.10D of the Insurance Code; they are, accordingly, "information deemed confidential" by statutory law, and excepted from release under section 3(a)(1) of the Open Records Act.

You claim that the complaint files regarding American Autoplan are excepted from disclosure by section 3(a)(3) of the Open Records Act, which excepts

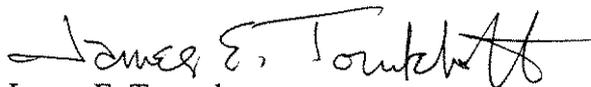
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, 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). 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. However, once a governmental body has selectively disclosed information relating to litigation, it is precluded from invoking section 3(a)(3) for that information. *See* Open Records Decision No. 454 (1986).

Article 1.33A of the Insurance Code provides that the department is generally subject to APTRA. You advise us that the complaint files regarding American Autoplan relate to an investigation of that insurance company and that the department anticipates that the investigation will culminate in a contested administrative case subject to APTRA with the named insurance agent as a party. Accordingly, we conclude that litigation may be reasonably anticipated. In addition, we accept the determination of the department attorney that the complaint files relate to the anticipated litigation. We note, however, that some of the information that you seek to withhold has been made available to the opposing party in the anticipated litigation. Specifically, a cease and desist order dated June 5, 1992, has been released to American Autoplan and thus must be released to the requestor. The remaining information, however, may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. As we resolve this matter under sections 3(a)(1) and 3(a)(3), we need not address the applicability of sections 3(a)(7), 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 ID# 18885.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

JET/GCK/jmn

Ref.: ID# 18885
ID# 18970

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