



Office of the Attorney General
State of Texas

June 29, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Jeff Hankins
Legal Assistant
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR93-362

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# 20065.

The Texas Department of Insurance (the "department") has received a request for information relating to certain department investigative records involving Mr. David Huckin. You advise us that you do not object to releasing most of the requested information. You have submitted to us for review, however, records that you seek to withhold under sections 3(a)(7) and 3(a)(11) of the Open Records Act.

Section 3(a)(7) protects

matters in which the duty of the Attorney General of Texas or 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, or which by order of a court are prohibited from disclosure. (Footnote omitted.)

Attorney-client communications, however, may be withheld only to the extent that such communications document confidences of governmental representatives or reveal the attorney's legal opinion and advice. Open Records Decision No. 574 (1990) at 3. Purely factual information, however, which does not contain legal advice or opinion, or reveal client confidences, is not protected by section 3(a)(7). *Id.*

You seek to withhold a memorandum from John Moore, Staff Attorney, to Gary Schroeder, Director of the Investigations Division, under section 3(a)(7). On its face, this document does not contain the confidences of governmental representatives, nor does it reveal an attorney's legal opinion and advice. We conclude, therefore, that it

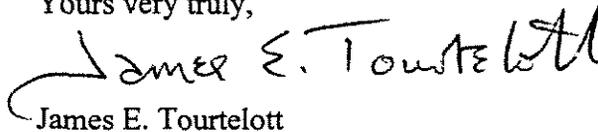
two documents titled "Request for Disposition of Disciplinary Case" dated September 11, 1986, contain some legal advice or opinion. This information has been marked and may be withheld under section 3(a)(7) of the Open Records Act. The remaining information on these documents, however, is not protected by the attorney-client privilege.

You also claim that the documents submitted to us for review 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 exempted 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*, 842 S.W.2d 408 (Tex. App.--Austin 1992, writ ref'd), 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 413. 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 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). 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.

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,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

JET/GCK/lmm

Ref: ID# 20065
ID# 20186
ID# 20402

cc: Mr. Mark J. Perrotti
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