



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1993

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

OR93-478

Dear Mr. Hankins:

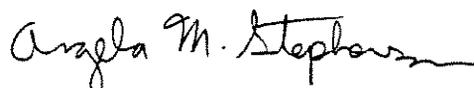
The Texas Department of Insurance (the "department") received a request for information concerning Texas Farm Bureau Mutual Insurance Company and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You claimed that sections 3(a)(3), 3(a)(7), and 3(a)(11) except the requested information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under sections 3(a)(3), 3(a)(7), and 3(a)(11) of the act. We have assigned your request ID# 18601.

To secure the protection of section 3(a)(3), 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); *see also* Open Records Decision No. 588 (1991) (contested case under APTRA is litigation for purposes of § 3(a)(3) exception). While in this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 3(a)(3), we note that some of the information submitted to us for review has already been obtained by all parties to the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). As the opposing parties in the litigation have seen or had access to the correspondence dated November 13, 1991, and September 21, 1992 ("Notice of Intention to Institute Disciplinary Action"), the request for issuance of subpoena duces tecum, and the subpoena duces tecum, there is no justification for now withholding this information from the requestor pursuant to section 3(a)(3). The remaining records, however, may be withheld under section 3(a)(3). Please note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney

General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As we resolve this matter under section 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 contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/GCK/jmn

Enclosures: Open Records Decision No. 615
documents submitted

Ref.: ID# 18601

cc: Ms. Sherwin A. Winniford
Fulbright, Winniford, Bice & Marable
P.O. Box 7575
Waco, Texas 76714-7575
(w/o enclosures)