



Office of the Attorney General
State of Texas

July 22, 1993

DAN MORALES
ATTORNEY GENERAL

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

OR93-479

Dear Mr. Hankins:

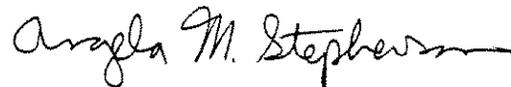
The Texas Department of Insurance (the "department") received a request for information concerning a certain insurance agent and insurance company and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You claimed that sections 3(a)(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)(7) and 3(a)(11) of the act. We have assigned your request ID# 18595.

Open Records Decision No. 574 (1990) held that the protection of section 3(a)(7) was limited to information that revealed client confidences to an attorney or that revealed the attorney's legal advice. Information that does not contain legal advice or opinion or reveal client confidences is not protected by section 3(a)(7). *Id.* Having examined these documents, we conclude that the memorandum from Nigel F. Gant to William P. Harbeson contains legal advice or opinion. Accordingly, this document may be withheld from required public disclosure under section 3(a)(7) of the act. The remaining documents consist of three pages of handwritten notes. You have not explained, nor is it otherwise apparent, that these documents contain legal advice or opinion or, if released, would reveal client confidences. If a governmental body does not assert an exception or does not explain how an exception relates to particular information, this office has no basis on which to conclude that the information is excepted from required public disclosure. *See* Open Records Decision No. 363 (1983). We conclude, therefore, that these remaining documents may not be withheld from required public disclosure under section 3(a)(7) of the act.

You also claim that these documents are excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception in light of the *Gilbreath* decision and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. While the documents submitted to us for review relate to the department's policymaking functions, they appear to contain only factual information. Section 3(a)(11) does not except purely factual information from disclosure. *Id.* at 5. Accordingly, we conclude that section 3(a)(11) does not except the remaining documents from required public disclosure. Except as noted above, the information submitted to us for review must be released in its entirety.

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
Submitted documents

Ref.: ID# 18595

cc: Mr. Robert Thomas
American Hallmark Insurance
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(w/o enclosures)