



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 2, 1993

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

OR93-491

Dear Mr. Hankins:

The Texas Department of Insurance (the "department") received a request for information concerning service warranty contracts and has 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. We have assigned your request ID# 17288 and ID# 19670. Specifically, the requestor seeks "copies of all correspondence, memoranda, legal briefs and opinion letters, and any other documents collected, assembled, or maintained by the Department relating to":

1. Service warrant contracts (sometimes called third-party obligor service contracts);
2. Service warranty contracts prohibited under Art. 1.14-1, unauthorized insurance;
3. Legal briefs or opinion letters prepared by staff attorneys Bob Clines, Nancy Ricketts, or Sandra Autry concerning service warranty contracts.

You claim that the requested information, representative samples of which you have submitted to us for review, is exempted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the act.

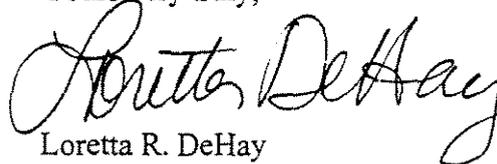
Section 3(a)(1) of act excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You advise us that some of the requested information is in the possession of the department's Insurance Fraud Unit. Section 5(a) of article 1.10D of the Insurance Code provides that materials "acquired by the department [and] relevant to an inquiry by the insurance fraud unit" are not public

records "for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest." In enacting section 5(a) of article 1.10D, the Legislature chose to grant the commissioner, rather than the attorney general, the authority to decide if the requested information is confidential. *See* Open Records Decision No. 608 (1992). Such materials as you have designated as falling within the ambit of section 5(a), *i.e.*, the documents submitted to us for review with your letter of September 11, 1992, are thus excepted from required public disclosure under section 3(a)(1) of the act.¹

You also claim that some of the requested information, specifically, those documents submitted to us for review with your letter of January 22, 1993, is 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. However, section 3(a)(11) does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. While the documents you have submitted for our review pertain to the policy functions of the department, some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 3(a)(11). The remainder of the requested information, except as noted above, must be released.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/jmn

Enclosures: Open Records Decision No. 615
Marked Documents

¹As we conclude that this information is excepted from required public disclosure by section 3(a)(1), we need not address the applicability of sections 3(a)(3) and 3(a)(7) of the act.

Ref.: ID# 17288
ID# 19670

cc: Mr. Brad N. Gahm
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