



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1993

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

OR93-706

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ Your request was assigned ID# 21654.

The Texas Department of Insurance (the "department") has received a request for information concerning a certain person. Specifically, the requestor seeks any consumer complaints in your possession concerning Mr. Howard Gene Holt. You have submitted the requested information to us for review and claim that sections 552.103(a) and 552.111 of the act exempt it from required public disclosure.²

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You have submitted to us for review a letter that a citizen submitted to the department, in which the citizen complains of an insurance agent's conduct. You also have submitted various other documents. It appears that the department generated these other documents in response to the consumer's complaint. They include a letter acknowledging the consumer's complaint, a letter to the consumer apologizing for the delay in responding to the complaint, a letter to Mr. Holt concerning the complaint, and various case notes and electronic mail printouts. Because the requestor seeks only "consumer complaints," it does not appear that most of the documents submitted to us for review are responsive to the request. For purposes of this ruling, however, we assume that they are.

You claim that section 552.103(a) excepts some of the requested information from required public disclosure. Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *See* Open Records Decision No. 551 (1990) at 4. 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), chapters 2001 and 2002 of the Government Code.³ *See* Open Records Decision Nos. 588 (1991) at 7; 368 (1983) at 1-2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In your initial letter to us requesting an open records determination, you advise that some of the requested information relates to the investigation of an individual for possible violations of state insurance laws and that the department anticipates that the investigation will culminate in a contested administrative case subject to APTRA with the named individual as party. *See* Insurance Code § 1.33A (subjecting department to APTRA). In your second letter to this office regarding this matter, you submitted to us for review documents "included in order to demonstrate that there is a pending investigation" in this matter. Some of the documents submitted to us for review are marked "3(a)(3)." Upon reviewing the information submitted to us for review, we find that we have no basis on which to conclude that litigation may be anticipated in this matter. Accordingly, we conclude that you may not withhold any of the requested information under section 552.103(a) of the act.

Finally, we address your contention that the department may withhold some of the requested information under section 552.111 of the act, which excepts information that constitutes an

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interagency or intraagency memorandum or letter which would not be available by law to a party in litigation with the agency.

In Open Records Decision No. 615 (1993) this office reexamined the section 552.111 exception and held that section 552.111 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 routine 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. In addition, an agency may not withhold factual information under section 552.111. *Id.*

You have marked the information for which you seek section 552.111 protection. This information contains advice, opinion, and recommendation relating to the department's policymaking functions. Accordingly, you may withhold it from required public disclosure under section 552.111 of the act. However, you must release the remaining information submitted to us for review 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,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/GCK/rho

Enclosures: Marked documents

Ref.: ID# 21654
ID# 21749

cc: Ms. Natalie Maltempo
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