



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, Mail Code 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-721

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 21653.

The Texas Department of Insurance (the "department") has received a request for information concerning an insurance agent. Specifically, the requestor seeks "a complete history of any complaints" on Mr. Jon Menzel. You advise us that closed or resolved complaints will be made available to the requestor. You claim that the remaining information is excepted from required public disclosure by sections 552.103(a) and 552.111 of the act, and have submitted representative samples for our review.

You claim that some of the requested information is excepted from required public disclosure by section 552.103(a), which 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

¹The Open Records Act, formerly codified as V.T.C.S. art. 6252-17a (1925), has been recodified as chapter 552 of the Government Code, in nonsubstantive recodification. See Acts 1993, 73d Leg., ch. 268 at 587.

(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. Open Records Decision No. 551 (1990). 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), V.T.C.S. article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).

You advise us that some of the requested information relates to an investigation of an insurance agent 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 agent as party. The documents show on their face that they are related to this investigation. Accordingly, we conclude that litigation may be reasonably anticipated. We note, however, that one of the documents for which you seek section 552.103(a) protection, namely a February 11, 1991 letter to Mr. Menzel, has already been made available to the opposing party in the anticipated litigation. Accordingly, you may not withhold this document under section 552.103(a). With respect to the remainder of the documents for which you assert the section 552.103(a) exception, we have reviewed them and agree that they relate to the anticipated litigation and may be withheld from required public disclosure under section 552.103(a) of the act. We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Finally, we address your contention that some of the requested information is excepted from required public disclosure by section 552.111 of the Government Code, which excepts information that constitutes an

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, factual information is not excepted by 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, the marked information may be withheld under section 552.111 of the act.

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,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Enclosures: Submitted documents

Ref: ID# 21653
ID# 21751

cc: Mr. Charles M. McQuien
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(w/o enclosures)