



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

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

OR94-318

Dear Ms. Sanchez:

Your predecessor at the Department of Insurance asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly article 6252-17a, V.T.C.S.).¹ The request was assigned ID# 21144.

The Texas Department of Insurance (the "department") received an open records request for certain records relating to Eagle Insurance Company ("Eagle"). In his initial letter to us, your predecessor indicated that the department would make available to the requestor any information responsive to the request that relates to closed or resolved complaints filed with the department. However, he sought to withhold the remaining information under sections 552.103(a) and 552.111 of the Government Code (formerly sections 3(a)(3) and 3(a)(11) of article 6252-17a, V.T.C.S.). In your predecessor's second letter to us regarding this matter, he submitted eight documents for our review and indicated that these documents were representative samples of the information the department believes is excepted from disclosure.

Your predecessor claimed that section 552.103(a) excepted from disclosure most of the documents he submitted for review. Section 552.103 excepts from required public disclosure information "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." To secure

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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.

the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. A contested case before an administrative agency subject to the Administrative Procedure Act, chapter 2001 of the Government Code (formerly article 6252-13a, V.T.C.S.), is a quasi-judicial proceeding for the purposes of section 552.103(a). Open Records Decision No. 588 (1991). Whether the requested information relates to the litigation must be determined on a case-by-case basis. See Open Records Decision No. 551 (1990) at 5. However, information cannot be withheld under section 552.103(a) after the opposing party in the litigation has had access to it. Open Records Decision Nos. 597 (1991) at 2; 525 (1989) at 4.

Even assuming that litigation is reasonably anticipated, we may not generally review one set of documents and conclude that another set of documents is excepted from disclosure by section 552.103. To demonstrate that requested information relates to litigation, you must submit all the requested records to us for review.² We must review each record you claim is excepted from disclosure by section 552.103 to determine whether it relates to the litigation. Therefore, you may not withhold under section 552.103 any requested documents that have not been submitted to us for review.

On the other hand, we conclude that section 552.103(a) excepts from disclosure some of the information your predecessor submitted for review. In particular, you may withhold the information that has not already been made available to Eagle. Some of the documents demonstrate on their face that Eagle has had access to them, and you may not withhold these documents under section 552.103(a). We cannot determine whether the remainder of the documents have been provided to Eagle. Therefore, you may withhold these documents under section 552.103(a) if they have not already been made available to Eagle. We have marked the documents accordingly.

Your predecessor also claimed that the marked portions of one document are protected by section 552.111. Section 552.111 excepts from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section protects only advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue; it does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. We have examined the document that your predecessor marked and conclude that it contains some advice, recommendations, and opinions. We have marked the portions of the document that you may withhold under section 552.111 of the Government Code.

²If the records are voluminous and repetitive, you may submit representative samples for our review. In this case, however, your predecessor did not indicate that the other records requested contain information that is the same or similar to the information in the records he did submit for review.

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 our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/JCH/KHG/rho

Ref.: ID# 21144

Enclosures: Marked documents

cc: Mr. Steven F. Westerfield
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(w/o enclosures)