



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

OR94-322

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID #22954.

The Texas Department of Insurance (the "department") has received an open records request for information about a particular insurance agent and complaints filed against him with the department for this year and "any previous years' complaints." The department claims that the information is protected from disclosure by section 552.103 of the act and has submitted representative samples of the information for our review.

The department states that there is an ongoing investigation on this individual and that it is anticipated "this investigation will culminate in an administrative contested case with the respondent as a party." The department further claims that the requested information is directly related to this anticipated litigation and that therefore section 552.103 excepts the information from disclosure.

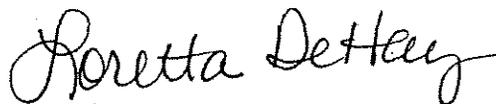
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the information submitted for our review relates to potential litigation for purposes of section 552.103(a).

We note, however, that the agent under investigation has already seen some of the records submitted for our review. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, the department may not now withhold that information from the requestor pursuant to section 552.103(a). Accordingly, we have marked the documents that the individual under investigation has seen and that you may not now withhold under section 552.103(a). You may withhold the remaining documents submitted for our review under section 552.103(a) only if they have not already been made available to the individual under investigation.

Although we have concluded that litigation is reasonably anticipated in this matter, we are unable to determine whether the requested records that were not submitted for our review relate to the potential litigation. Ordinarily, this office must review each record you claim is exempted from disclosure under section 552.103 to determine whether it relates to the litigation. If, however, the records are voluminous and repetitive, you may submit representative samples for our review. Open Records Decision Nos. 499 at 6, 497 at 4 (1988). In this case, you did not indicate that the other requested records contain information that is similar to the information in the records you did submit for review. Therefore, you may not withhold under section 552.103 any requested documents that have not been submitted to this office 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,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/JCH/rho

Ref.: ID# 22954

Enclosures: Marked documents

cc: Ms. Ann Howard  
U.S. Financial Life Insurance Company  
Six East Fourth Street  
Cincinnati, Ohio 45202  
(w/o enclosures)