



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 16, 1994

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

OR94-435

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 24435.

The Texas Department of Insurance ("the department") received two requests. One is for all information relevant to case number 1349. The other is for information concerning complaints against the Ohio Indemnity Company. You enclosed information which you say is responsive to both requests and assert that sections 552.103, 552.107 and 552.111 of the Government Code except portions of the information from required public disclosure. This ruling applies to both requests for information.

Section 552.103 excepts from required public disclosure information that relates to pending or reasonably anticipated litigation to which a governmental body is a party. *See* Open Records Decision No. 551 (1990). We agree that litigation is reasonably anticipated in this instance. You may withhold information that relates to the reasonably anticipated litigation based on section 552.103 of the Government Code.<sup>1</sup>

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<sup>1</sup>In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; 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

Section 552.107(1) protects information that is within the attorney-client privilege. Generally, the privilege applies to communications of legal advice or opinion and to communications containing client confidences. *See* Open Records Decision No. 574 (1990). This exception does not apply to a communication from an attorney of basically factual information about a case, unless such communication contains a client confidence. *See id.* We have marked one portion of a document to which section 552.107(1) applies.

Section 552.111 of the Government Code provides in part that "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from" required public disclosure. This exception applies to internal agency communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body.<sup>2</sup> This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. We have marked the documents to which section 552.111 applies.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

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(Footnote continued)

to section 552.103(a). We also 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).

<sup>2</sup>Thus, section 552.111 applies to attorney work product information only if such information consists of an internal communication of advice, recommendation or opinion reflecting the policymaking processes of the governmental body at issue.

KHG/SLG/rho

Ref.: ID# 24435

Enclosures: Marked documents

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