



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

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

OR94-591

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 request was assigned ID# 26700.

The Texas Department of Insurance ("the department") received an open records request for certain records that you contend may be withheld from the public pursuant to the Open Records Act, sections 552.101 and 552.103(a) of the Government Code.

You raise section 552.101 in regard to two documents which contain the complainant's name and other identifying information. Section 552.101 excepts from required public disclosure information considered to be confidential by law. You assert that section 552.101 applies to these documents because they may be withheld from required public disclosure under the informer's privilege.

The informer's privilege aspect of section 552.101 protects the identity of individuals who report violations of law. *See* Open Records Decision No. 515 (1988). It applies when the informer reports violations of statutes with civil or criminal penalties to administrative officials having a duty of inspection or of law enforcement within their particular spheres. *Id.* at 2. We agree that the informer's privilege applies in this case. Consequently, the department may withhold from required public disclosure the information on these two documents that identifies the complainant. Since the documents are handwritten by the complainant, and since the handwriting could identify the complainant, we conclude that the department may withhold these documents in their entirety.

You raise section 552.103(a) in regard to the remaining information. 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). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

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 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).

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 Guajardo
Assistant Attorney General
Open Government Section

KHG/MAR/rho

Ref.: ID# 26700

Enclosures: Submitted documents

cc: Ms. Julianne Boone
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(w/o enclosures)