



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 4, 1996

Ms. Christine L. Rodriguez
Staff Attorney
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-0284

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38383.

The Texas Department of Insurance (the "department") received a request for the department's files relating to National Accident Insurance Underwriters, Heritage Life Insurance Company, General Agent Center, Mark Malin, Stella Rawls, AGR Insurance Agency, and Product Management. The requestor subsequently narrowed his request to those files from 1990 forward and to files relating to orders, complaints, licensing, advertising, and agent appointments. You state that the department will release some of the requested information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. You have submitted samples of the requested documents to this office for review. We have considered the exceptions you claimed and have reviewed the sample documents.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the

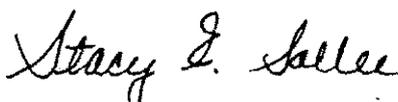
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize 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.

burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that the information you seek to withhold relates to an ongoing investigation of Stella Rawls, AGR Insurance Agency, and Product Management, Inc. (collectively, "Rawls") for alleged violations of state insurance laws. You state that the department anticipates that this investigation will culminate in an administrative contested case against Rawls. We therefore conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The department may withhold the submitted records pursuant to section 552.103 of the Government Code. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref: ID# 38383

Enclosures: Submitted documents

²As we have concluded that the requested documents may be withheld from disclosure under section 552.103, we need not now address your other claimed exceptions.

cc: Mr. John D. Stover
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(w/o enclosures)