



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1996

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

OR96-0679

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39879.

The Texas Department of Insurance (the "department") received a request for information seeking documents related to all complaints and disciplinary action against certain individuals and an insurance agency. You state that the department will provide the requestor with copies of the agent reports and any disciplinary action taken. The department, however, seeks to withhold the complaints filed against the parties. You claim that the complaints are excepted from required public disclosure under section 552.103(a) of the Government Code. You have submitted the documents at issue which the department seeks to withhold.

To show that section 552.103(a) is applicable, the department must demonstrate 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. Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. *Open Records Decision No. 588 (1991)* at 7. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. *Open Records Decision No. 518 (1989)* at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Open Records Decision No. 452 (1986)* at 4.

In this instance, you state that the department is conducting an investigation into the complaints. The complaints may reveal violations of the state's insurance laws. If

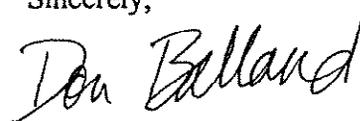
violations are discovered, you state that the investigations "will culminate in an administrative contested case against" the persons or agencies named in the complaints. We conclude that litigation is reasonably anticipated. We additionally find that the documents submitted by the department are related to the reasonably anticipated litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, 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).

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.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39879

Enclosures: Submitted documents

cc: Ms. Heather M. Rariden
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(w/o enclosures)