



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1997

Mr. Frank Stenger-Castro
General Counsel
Texas Workers' Compensation Insurance Facility
8303 MoPac Expressway North, Suite 310
Austin, Texas 78759-8396

OR97-1278

Dear Mr. Stenger-Castro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106338.

The Texas Workers' Compensation Insurance Facility (the "facility") received a request for the facility's annual reports for the last six years, and a listing of member insurance companies including the portion of the facilities surplus and deficits that were assessed or rebated. You state that you will release the annual reports. You claim, however, that company listings with surplus and deficit assessments or rebates information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the 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 governmental must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the facility is currently involved in pending litigation. *Travelers Indem. Co. v. Workers' Compensation Ins. Facility*, No. 95-15470 (250th Dist. Ct. Travis County, Tex. Jan. 24, 1997). You have provided this office with the pleadings in that suit. You have demonstrated that litigation is pending and that the documents are related to the litigation. You may withhold the company listings with surplus and deficit assessments or rebates information under section 552.103.

Generally, however, 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.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 106338

Enclosures: Submitted documents

cc: Mr. Jim Wood
5103 Smokey Valley, Suite B
Austin, Texas 78731
(w/o enclosures)