



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1997

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2009

Dear Ms. Rodriguez:

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# 108724.

The Texas Department of Insurance ("TDI") received a request for information concerning Allstate Indemnity Company and Allstate Insurance Company. You state that some of the requested information has been released to the requestor. However, you contend that the remaining information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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.

TDI 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

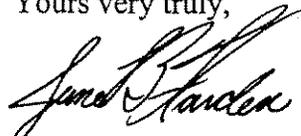
at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. TDI must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you have presented us with Respondent's First Set of Interrogatories to Texas Department of Insurance for the case styled *In the Matter of Allstate Property & Casualty*, Docket No. 454-97-0985, pending before the State Office of Administrative Hearings. After reviewing the submitted material, we find that litigation is pending. We also conclude that the documents you have submitted relate to the litigation, and may be withheld.

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). You have included a copy of a deposition and a copy of a TDI hearing record. If this, or any other information, has either been obtained from or provided to the opposing party in the anticipated litigation, it 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).¹

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ glg

Ref.: ID# 108724

Enclosures: Submitted documents

¹Because we are able to make a determination under section 552.103, we do not address your other arguments against disclosure.

cc: Mr. John Holland
Law Firm of John Holland
3001 Brown Trail, Suite 103
Bedford, Texas 76021
(w/o enclosures)

