



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1998

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance Division, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-1763

Dear Mr. Tredway:

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# 116948.

The Texas Department of Insurance (the "department") received a request for "any current or past disciplinary action, open or closed complaints or investigation against" certain named individuals and entities. You inform us that the department has released to the requestor portions of the requested information. However, you assert that certain marked portions of the requested information are exempted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is exempted from [required public disclosure] if it is 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.

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. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing for purposes of section 552.103(a). The department may therefore withhold the information from the requestor based on section 552.103.¹

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 116948

Enclosures: Submitted documents

cc: Mr. Jed Schmidt
Crouch Insurance Consulting, Inc.
5929 Balcones Drive, Suite 301
Austin, Texas 78731
(w/o enclosures)

¹If the opposing party in the litigation has 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). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).