



Texas Department of Insurance

333 Guadalupe Street P.O. Box 149104 Austin, Texas 78714-9104
512/463-6169

IO # 16312
Jh - Gov

June 5, 1992

RQ-4114

RECEIVED

JUN 09 92

Opinion Committee

Attention: Opinion Committee
The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Information Concerning Aetna, Travelers and Prudential Insurance Companies

Dear General Morales:

On May 28, 1992, this agency received the attached request for any complaints filed against the above-referenced insurance companies. Some of the requested information will be made available to Mr. Justiss; however, the Texas Department of Insurance contends that the remaining requested information is exempt from public disclosure under the Texas Open Records Act, TEX. REV. CIV. STAT. ANN. art. 6252-17a, §§3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) (Vernon Supp. 1992). This agency is requesting your determination on this information for the reasons discussed below.

The information in question is protected from public disclosure under §3(a)(1) of the Open Records Act. Section 3(a)(1) exempts from public disclosure "information deemed confidential by law". As amended by the 72nd Texas Legislature, Texas Insurance Code, art. 1.10D, §5(a) provides that "any information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the Commissioner considers reasonably necessary to complete the investigation . . ." TEX. INS. CODE ANN. art. 1.10D, §5(a) (Vernon Supp. 1992). The Texas Department of Insurance Fraud Unit is currently conducting inquiries relating to the above-named companies. Although these investigations began and some relevant documents were compiled before the recent enactment of art. 1.10D, this agency contends that the confidentiality provided in §5(a) applies to all case files transferred to or initiated by the Insurance Fraud Unit. It is unreasonable and would defeat the purpose of the statute to limit such confidentiality to information acquired only after the enactment of art. 1.10D.

The Honorable Dan Morales

June 5, 1992

Page 2 of 3

It is further the contention of the Texas Department of Insurance that any information or material relevant to an inquiry by the Insurance Fraud Unit is exempt from public disclosure under art. 1.10D until the Commissioner's determination is made, or until a district court order is issued, as required by art. 1.10D. Further, we contend that such information would not have been subject to public disclosure even prior to enactment of art. 1.10D, due to other exemptions from the Open Records Act, discussed in more detail below. The protection from disclosure should also extend to the subject or status of an investigation by the Insurance Fraud Unit. In this instance, the inquiries relating to Aetna, Travelers, and Prudential Insurance Companies are still pending, and the Commissioner of Insurance has not altered the status of the inquiries. The requested information is therefore deemed confidential by statute and should be exempt from public disclosure under TEX. REV. CIV. STAT. ANN. art. 6252-17a, §3(a)(1).

The requested information is also exempt from public disclosure under §3(a)(3) of the Open Records Act. The information relates to a number of ongoing investigations of the above-referenced companies. These investigations are being conducted by several different divisions within this agency. It is anticipated that the investigations will culminate in litigation with the above-referenced companies as parties. The attorneys responsible for reviewing these matters have determined that the information is directly related to the anticipated litigation. The requested information should be withheld from public disclosure under the Open Records Act. TEX. REV. CIV. STAT. ANN. art. 6252-17a, §3(a)(3), in accordance with the reasoning in Open Records Decision Nos. 551 (1990) and OR90-475 (1990).

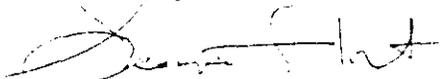
Additionally, the requested information includes intra-agency memoranda which contain advice, opinions, and recommendations concerning the deliberative process involving the investigations of Aetna, Travelers, and Prudential Insurance Companies. It is not possible to sever the advice, opinions, and recommendations from any factual material presented in the memoranda. The information is exempt from public disclosure under TEX. REV. CIV. STAT. ANN. art. 6252-17a, §3(a)(11), in accordance with the reasoning in Open Records Decision Nos. 563 (1990), 464 (1987), and 466 (1987).

The requested information also includes legal advice and opinions which are attorney-client communications and are exempt from public disclosure under TEX. REV. CIV. STAT. ANN. art. 6252-17a, §§3(a)(1) and 3(a)(7), as interpreted in Open Records Decision Nos. 574 (1990), 462 (1987), and 380 (1983). Representative samples of the requested information which this agency considers to be exempt will be forwarded to your office, should you request it.

The Honorable Dan Morales
June 5, 1992
Page 3 of 3

Your time and attention to this matter are appreciated. Please forward all correspondence related to this matter to Jeff Hankins, Legal Assistant, Program Division, Legal Services, 110-1C.

Sincerely,



Georgia D. Flint
Commissioner of Insurance

GDFJH:kv

cc: Caroline Scott
Insurance Fraud Unit

Sammie K. Glasco
Insurance Fraud Unit

Kimberly L. Kiplin
Staff Attorney