



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 14, 1989

Mr. A. W. Pogue
Commissioner
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Mr. Pogue:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5709; this decision is OR89-82.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The State Board of Insurance receive a request from an attorney, Mr. Scott Hudson, for information about complaints lodged against his client, Mr. Hugh M. Roth. The board claims that section 3(a)(3) of the Open Records Act protects the complaint letters from required public disclosure. Section 3(a)(3) protects information related to litigation if litigation is pending or reasonably anticipated and if release of the information would impair the governmental body's litigation interests. Open Records Decision No. 478 (1987). Litigation includes contested cases before administrative agencies. Open Records Decision Nos. 368 (1983); 301 (1982). We have reviewed the information submitted for review and determined that section 3(a)(3) protects the contents of the letters. This decision does not address whether any other provision of law might grant the requestor a right to the information.

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Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-82.

Yours very truly,
Open Government Section 
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

Ref.: ID# 5709

cc: Scott W. Hudson
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