



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 12, 1989

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

Dear Mr. Pogue:

You have requested our decision on the applicability of the Open Records Act, article 6252-17a, V.T.C.S., to records which are directly related to an investigation which you anticipate will result in disciplinary action being taken against the requestor. Your request was assigned ID# 5662; this decision is OR89-114.

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. The act does not require this office to raise and consider exceptions that you have not raised.

The investigation of Mr. Heimbaugh (the requestor) and Cantu-Stephens Group centers around his involvement with Employee Benefit Plans, Inc. and Employee Benefit Claims, Inc., which are allegedly engaged in the unauthorized business of insurance. Also, the Cantu-Stephens Group allegedly violated laws against using the Guaranty Fund in advertising. You state that the records in question contain material of a privileged nature, i.e., reports of investigations and attorney work product, and that the information in Mr. Heimbaugh's files relates directly to the investigation of the other entities mentioned. You have responded to Mr. Heimbaugh's request by informing him that the records are exempt from disclosure under section 3(a)(3) of the Open Records Act.

Section 3(a)(3), known as the litigation exception, protects the litigation interests of an entity that is or is

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about to be involved in a lawsuit. To secure the protection of this exception, a governmental body must first demonstrate to the attorney general that a judicial or quasi-judicial proceeding is pending or reasonably anticipated, Open Records Decision Nos. 452 (1986); 360 (1983), that the requested material is relevant to the litigation, Open Records Decision No. 323 (1982), and that disclosure of the materials would adversely affect the governmental body's litigation interests, Open Records Decision No. 478 (1987). We have reviewed the information in question and determined that it meets these tests.

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 decision, please refer to OR89-114.

Yours very truly,  
*Open Government Section*  
*of the Opinion Committee* 

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

JSR/MAK/bc

Ref.: ID# 5662