



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 8, 1992

Ms. Georgia Flint
Acting Commissioner
Texas Department of Insurance
333 Guadalupe Street
P. O. Box 149104
Austin, Texas 78714-9104

OR92-6

Dear Ms. Flint:

Your predecessor in office asked us whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), article 6252-17a, V.T.C.S. We assigned ID# 13956 to this request.

The Texas Department of Insurance received a request for information in the pending third-party administrator application of a certain entity. Specifically, the requestor seeks information answering the following questions:

As a third-party administrator, which carrier(s) and/or self-funded plan(s) would they pay claims for?

Who are [the entity's] officers and directors and what are their current positions?

Have any of the officers or directors ever been subject to sanctions by the Board of Insurance?

You have submitted the records to us that you believe are responsive to the request.

You state that all of the information requested relates to an ongoing investigation the Texas Department of Insurance is conducting into this certain entity. You contend the information is excepted in its entirety by section 3(a)(3) of

the act, and that a portion of the information is excepted by sections 3(a)(1) and 3(a)(7) of the act.

Section 3(a)(3) excepts from disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3). The application of section 3(a)(3) to except information from disclosure requires two preconditions: first, that litigation be pending or reasonably anticipated; and second, that the information relate to the litigation. Open Records Decision No. 551 (1990) at 4. We are informed that the Texas Attorney General, on behalf of the Texas Department of Insurance, has filed a lawsuit against the entity about which the requestor seeks information. As litigation is pending, the first precondition is satisfied. We must determine whether the second precondition is satisfied, i.e., whether the information *relates to* the pending lawsuit.

In Open Records Decision No. 551, we stated that if our review of information that a governmental body seeks to withhold pursuant to section 3(a)(3) indicates that the governmental body reasonably has established the relatedness of the subject matter of the requested information to the litigation, a governmental body should withhold documents under the act so that the discovery process may operate properly. *Id.* at 5. Upon reviewing the documents you have submitted, we conclude that the Texas Department of Insurance has established the relatedness of the subject matter of the requested information to the litigation that is pending in this case. *See generally* Open Records Decision Nos. 555, 551 (1990). Please note that this ruling applies only for the duration of the litigation and only to the information at issue here.

As we resolve this issue under section 3(a)(3), we need not discuss the applicability of sections 3(a)(1) and 3(a)(7) at this time. Because 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 OR91-6.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/mc

Ref: ID# 13956

Enclosures: Open Records Decision Nos. 555, 551 (1990)

cc: Mr. Len Boselovic
The Pittsburgh Press
34 Boulevard of the Allies
Pittsburgh, Pennsylvania 15230