



Office of the Attorney General

State of Texas

March 27, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Jeff Hankins
Program Division, Legal Services 110-1C
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR92-123

Dear Mr. Hankins:

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# 14988.

You have received a request for information relating to Texas Department of Insurance (the "department") investigations of several insurance companies of the ICH Holding Company. Specifically, the requestor seeks

any disciplinary actions against; departmental communications with; or internal agency early warning (EWMG), investigations, or unauthorized insurance memorandum on Great Southern Life Insurance Company, Southwestern Life Insurance Company, Marquette National Life Insurance Company, Modern American Life Insurance Company, or ICH since 1984.

In addition, the requestor seeks "any advertising and policy approval actions or correspondence that occurred in the 1986 through 1990 time frame regarding life insurance products and/or consumer misrepresentation . . . [and] copies of any financial or market conduct examination reports that exist on any examinations that

occurred since 1986."¹ You have submitted to us for review representative samples of the requested information. You advise us that closed investigative files concerning Great Southern Life Insurance Company and Southwestern Life Insurance Company have already been made available to the requestor. You claim, however, that the remainder of the requested information relates to a pending investigation of the ICH Holding Company and is thus excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that some of the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(12).

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

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, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, 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.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA), article 6252-13a, V.T.C.S. Open Records Decision Nos. 588 (1991); 368 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

Article 1.33A of the Insurance Code Provides that the department is generally subject to APTRA. You advise us that the requested information relates

¹The requestor also seeks "copies of any complaints, disciplinary actions, or departmental inquiries or memorandum relating to the activities of a certain agent . . . or his insurance agency Management Corporation Group Dallas Incorporated." You advise us that the department is not in possession of any such information. The Open Records Act does not require a governmental body to release information that it does not possess. Open Records Decision No. 558 (1990).

to an investigation of an insurance company for possible violations of state insurance laws and that the department anticipates that the investigation will culminate in a contested administrative case subject to APTRA with the named company as party. Accordingly, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that they relate to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(12) at this time.

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 OR92-123.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 14988
ID# 15200

cc: Mr. Jim Wood
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