



Office of the Attorney General
State of Texas

April 9, 1992

DAN MORALES
ATTORNEY GENERAL

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

OR92-141

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# 15249.

You have received a request for information relating to an insurance agent and his insurance company. Specifically, the requestor seeks "any records, files or other documents in the possession of the [Texas Department of Insurance] regarding Dan McGee, individually, or Dan McGee & Associates, Inc. . . . [including] any investigative files or complaint files." The requestor also seeks an order revoking the agent's license. You advise us that some of the requested information has been made available to the requestor. You claim, however, that all of the remaining information relates to a pending investigation of the insurance agent, including investigation reports, witness statements, correspondence, and potential evidence, and therefore is excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that portions of that information are excepted by sections 3(a)(1), 3(a)(7), and 3(a)(11).

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), V.T.C.S. article 6252-13a. 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 Texas Department of Insurance (the "department") is generally subject to APTRA. You advise us that the requested information relates to an investigation of an insurance agent 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 agent 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), and 3(a)(11) 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 OR92-141.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GK/lmm

Ref.: ID# 15249
ID# 15381

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