



Office of the Attorney General
State of Texas

September 14, 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

OR92-543

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 17060.

You received a request for information relating to a Texas Department of Insurance investigation of an insurance agent. The requestor seeks "access to the file you have in the Legal Division as it pertains to Mr. [Paul] Gabriel." You claim the requested information is excepted from required public disclosure by Open Records Act sections 3(a)(3), 3(a)(7), and 3(a)(11).

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 . . . 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 matter is pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision No. 551 (1990). When parties to litigation have been provided with the information at issue, section 3(a)(3) does not protect it from further disclosure. Open Records Decision No. 493 (1988) at 2. Accordingly, the notice of intent to institute disciplinary action dated December 14, 1990, the temporary restraining

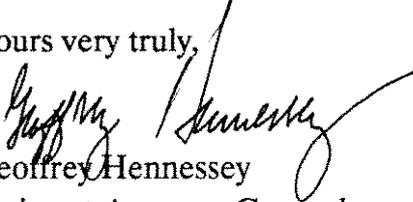
order issued by the 162nd District Court, the affidavit of Mr. Gabriel of May 29, 1990, and the letter from the department to Mr. Gabriel's attorney dated February 13, 1991, which have previously been made available to the party to the anticipated litigation, may not be withheld from required public disclosure and must be released.

The litigation exception applies to records relating to a contested case under 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.

Insurance Code Article 1.33(a) provides that the department is subject to APTRA. You advise that the requested information relates to an investigation of an insurance agent, and the department anticipates that the investigation will culminate in a contested case subject to APTRA. Accordingly, we conclude that litigation may be reasonably anticipated. You indicate that the department attorney has determined that the requested documents relate to the anticipated litigation. We agree. With the exception of the documents addressed above, the information may be withheld from required public disclosure under Open Records Act section 3(a)(3). 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 sections 3(a)(7) and 3(a)(11).

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 OR92-543.

Yours very truly,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GCK/lmm

Ref: ID# 17060
ID# 17148

cc: Mr. R. B. Ashworth
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