



Office of the Attorney General
State of Texas

September 13, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Jeff Hankins
Legal Assistant
Regulated Lines Section
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR93-558

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21498.

The Texas Department of Insurance (the "department") received an open records request for certain information pertaining to the department's current investigation of a particular complaint against two insurance agents. You have submitted to this office for review a representative sample of records you believe to come under the protection of sections 552.103 (former section 3(a)(3)) and 552.111 (former section 3(a)(11)) of the Open Records Act.²

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the section 552.103 exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the

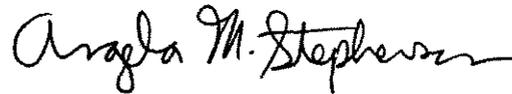
¹The 73rd Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73rd Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You have also submitted to this office records that demonstrate that there is a pending investigation and anticipated litigation with regard to the complaint. Because you do not also contend that these records are excepted from required public disclosure, the department must release these records.

governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* In this instance you have made the requisite showing that litigation regarding the complaint is reasonably anticipated at this time and that the records you seek to withhold "relate" to that litigation. The department therefore may withhold pursuant to section 552.103 those records that you have indicated come under the protection of both sections 552.103 and 552.111 of the act.³

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 contact our office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/rho

Ref.: ID# 21498
ID# 21611

Enclosures: Submitted documents

cc: Mr. David Elliott
Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)

³Because the department may withhold these records pursuant to section 552.103, we need not discuss at this time the applicability of section 552.111.