



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-800

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23398.

The Texas Department of Insurance (the "department") received an open records request for the case file or files regarding the department's investigation of the requestor's complaint against Gallagher Braniff, Inc., case number 910988. You indicate that you released some of the requested information, but you seek to withhold the remaining information, representative samples of which you have submitted for review.¹ You argue that section 552.111 excepts from disclosure all or parts of 12 documents, which we have marked as exhibits 6 through 18. You argue that section 552.107 excepts from required public disclosure parts of two documents, which we have marked as exhibits 4 and 5. Finally, you argue that both sections 552.107 and 552.111 except from required public disclosure all or parts of three documents, which we have marked as exhibits 1 through 3.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim that some of the information is excepted from disclosure as attorney work product. To be excepted from disclosure, however, attorney work product must meet the requirements of one of the exceptions in the Open Records Act. Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” This section applies to internal agency communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. This section does not protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Although section 552.111 might apply to some information that also qualifies as attorney work product, work product may be excepted from disclosure under section 552.103(a)(1). Open Records Decision No. 429 (1985) at 4. Section 552.103(a)(1) excepts from disclosure information “relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party” To establish that this section applies to information, a governmental body must demonstrate that it is involved in or reasonably anticipates it will be involved in litigation and that the information relates to that litigation. *See* Open Records Decision Nos. 555 at 2 (declaring that for the litigation exception to apply the requested information must relate to litigation that is pending or reasonably anticipated), 542 at 2 (stating that the governmental body must show how and why an exception applies) (1990).

We have examined exhibits 1 through 3 and 6 through 18 and have concluded that they contain some advice, recommendations, and opinions that may be withheld under section 552.111. You have not, however, established that any of the information is attorney work product excepted from disclosure under section 552.103; you have not demonstrated that the department is involved in or reasonably anticipates any litigation to which the information relates. Therefore, you may not withhold any information as attorney work product under section 552.103. On the other hand, you may withhold under section 552.111 the portions of exhibits 1, 2, 3, 12, 13, 14, and 16 that we have highlighted in yellow.²

We also conclude that section 552.107 excepts from disclosure a portion of exhibit 4. Section 552.107(1)³ excepts from required public disclosure information covered by the attorney-client privilege. This privilege encompasses information that reveals client confidences to the attorney and attorney communications of legal advice and opinion to the client. Open Records Decision No. 574 (1990) at 3. We have

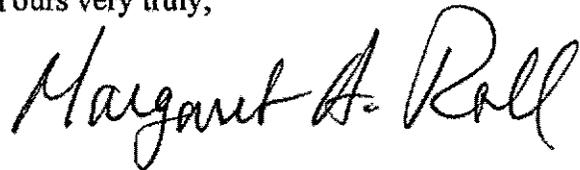
²We note that section 552.111 is a discretionary exception. Therefore, you may choose to release any or all the information that section 552.111 protects.

³Section 552.107(2) concerns information subject to a court order prohibiting disclosure and is not involved in this case.

examined the portions of the documents that you claim are excepted from disclosure under section 552.107 and that are not excepted from disclosure under section 552.111.⁴ You may withhold the marked section of exhibit 4 as a client confidence under section 552.107(1).⁵

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/JET/rho

Ref: ID# 23398

Enclosures: Marked documents

cc: Mr. Jack R. Kirwan
2574 Marilee Lane, Suite 33
Houston, Texas 77057
(w/o enclosures)

⁴We do not consider here whether information already excepted from disclosure under section 552.111 is also excepted from disclosure under section 552.107.

⁵Section 552.107(1), like section 552.111, is a discretionary exception. Therefore, you may also choose to release the information that section 552.107(1) protects.