



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1995

Mr. Richard Ybarra
Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1081

Dear Mr. Ybarra:

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# 35847.

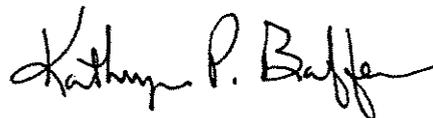
The Office of the Attorney General, Insurance Practice Division, (the "attorney general") received an open records request for all documents relating to the attorney general's investigation of Travelers Insurance Company and Prudential Insurance Company violations of their insuring agreements with their insureds as they relate to the provision for an 80/20 copayment. You contend that sections 552.101, 552.103(a), and 552.111 of the Government Code exempts the requested documents from required public disclosure. You have submitted for our review information which you assert reflects that the requested documents are "related to the active litigation or investigation," documents at issue, and copies of documents you have already released.

To show that section 552.103(a) is applicable, the attorney general must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Since we have resolved this request pursuant to section 552.103 we do not address your arguments raising other exceptions under chapter 552 of the Government Code. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 35847

Enclosures: Submitted documents

cc: Mr. Brian Turner
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