



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1995

Ms. Christine T. Rodriguez  
Staff Attorney  
Legal and Compliance, MC110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78711-9104

OR95-1092

Dear Ms. Rodriguez:

You have asked 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# 36069.

The Texas Department of Insurance (the "department") received a request for the complaint files concerning a named insurance company. You state that the requested complaints relate to an ongoing investigation being conducted by the department. You also indicate that the reviewing attorney has determined the information should be withheld pursuant to section 552.103(a) because the department anticipates litigation against the named insurance company.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated in a judicial or quasi-judicial proceeding 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. A governmental entity must meet both prongs of this test for information to be excepted under 552.103(a).

You have provided information that shows litigation is reasonably anticipated. You also submitted to this office for review representative samples of the requested

documents.<sup>1</sup> We agree that the documents are related to the subject of the anticipated litigation. Since the department has met its burden under section 552.103(a), you may withhold from disclosure all documents except those already seen by the opposing party in the anticipated litigation. Once all parties to anticipated litigation have had access to or seen the information at issue, no section 552.103(a) interest exists with respect to that information. *Open Records Decision Nos. 349 (1982), 320 (1982)*.

We are resolving this matter with an 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 should 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 36069

Enclosures: Submitted documents

cc: Mr. Stephen Jon Moss  
Henslee, Ryan & Groce  
Great Hills Plaza  
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Austin, Texas 78759-6303  
(w/o enclosures)

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<sup>1</sup>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 Nos. 499 (1988), 497 (1988)*. Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.