



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-1097

Dear Ms. Rodriguez:

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# 30868.

The Texas Department of Insurance (the "department") received a request for information concerning the National American Life Insurance Company of Pennsylvania (the "insurance company"), specifically, a copy of a cease and desist order and the department's complete file on the company. You say the department will release some of the requested information, but that the department seeks to withhold from required public disclosure certain information in the file based on sections 552.103, 552.107(1), and 552.111 of the Government Code.

Section 552.103(a) applies to information:

(1) 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 or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You state as follows:

This information relates to an ongoing investigation of National American Life Insurance Company of Pennsylvania for alleged violations of state insurance laws. This investigation has culminated in an administrative contested case with the entity as a party. The attorney responsible for reviewing this matter has determined that the requested information is directly related to anticipated litigation.

In this instance, we believe you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld based on section 552.103, with the exceptions noted below.¹

Much of the information consists of correspondence with counsel for the insurance company and other information the opposing party has apparently had access to. When the opposing parties in the litigation have seen or had access to any of the requested information, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the documents which the insurance company has apparently had access to and to which section 552.103 does not apply.

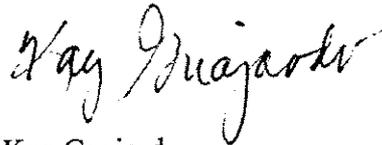
You also raise sections 552.107(1) and 552.111 of the Government Code. These exceptions do not apply to the information the insurance company has had access to. *See* Open Records Decision Nos. 615 (1993), 574 (1990). Accordingly, the correspondence from the insurance company must be released.

In reaching our conclusion here, 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) (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.

¹The 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).

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 30868

Enclosures: Marked documents

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(w/o enclosures)