



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal Services, MC110-1A
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR95-1143

Dear Ms. Rodriguez:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 20543.

The Texas Department of Insurance ("the department") received a request for information concerning the following insurance companies: Farmers Insurance Group Companies, Mid Century Insurance, Texas Farmers County Mutual, Farmers Group Inc., Truck Insurance Exchange, and Fireman's Fund. You say that some of the requested information will be made available to the requestor; however, you assert that part of the requested information is excepted from required public disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. You enclosed representative samples of the requested information. You say that the documents tabbed as "A" are included "to demonstrate that there are ongoing investigations against several of the insurance companies." You say that the documents tabbed as "B" include party communications and attorney work product protected under section 552.111 of the Government Code.

Although you state that the documents tabbed as "A" were included to demonstrate that the department is investigating the insurance companies, you marked each as within section 552.103, so we assume that you seek to withhold the documents tabbed as "A" under that exception.

To secure the protection of section 552.103(a) of the Government Code, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551. (1990). In this instance you have made the requisite showing that the information under tab "A" relates to reasonably anticipated litigation for purposes of section 552.103(a).

However, the opposing party to the anticipated litigation has had access to much of the information under tab "A". No section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, you may withhold pursuant to section 552.103 the information under tab "A" that the opposing party has not had access to. Please note that the applicability of this exception ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.111 permits a governmental agency to withhold from required public disclosure its internal communications consisting of advice, recommendations, opinions, and other material reflecting the agency's deliberative or policymaking processes. Open Records Decision No. 615 (1993). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinion, and recommendation. *Id.* Nor does section 552.111 apply to an attorney's work product. An attorney's work product may be excepted from required public disclosure under section 552.103(a) if it relates to pending or reasonably anticipated litigation to which the governmental body is a party. *See* Open Records Decision No. 575 (1990). We have marked the portions of the information under tab "B" that the department may withhold pursuant to section 552.111.¹

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# 20543

¹In 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.

Enclosures: Marked documents

cc: Ms. Lauren P. Kramer
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(w/o enclosures)