



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 28, 1995

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

OR95-1316

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# 18440.

The Texas Department of Insurance ("the department") received an open records request for "a copy of the internal audit report on the premium finance unit of the Texas Department of Insurance." A prior ruling of this office determined that the department may withhold the audit report based on section 552.103 of the Open Records Act. *See* Open Records Letter No. 91-624 (1991). You assert that section 552.103 still applies to the audit report. You also raise section 552.111 of the Open Records Act as an exception to the required public disclosure of portions of the report.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). This exception applies to records relating to a contested case before an administrative agency. *See* Open Records Decision Nos. 588 (1991), 368 (1983).

The relatedness of the audit report to the litigation remains unchanged. The department has submitted copies of correspondence between a department attorney and an attorney representing a client whose employment with the department was terminated.

That client has requested a grievance hearing regarding the termination of his employment. We conclude that it is reasonable to anticipate litigation in this matter. Accordingly, you may withhold the requested audit report under section 552.103.<sup>1</sup>

In reaching this conclusion, we assume that the aggrieved employee, 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 the audit report, the department may not now withhold that information from the requestor pursuant to section 552.103(a). Also, please 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).

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,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 18440

Enclosures: Submitted documents

cc: Mr. Bruce Hight  
Austin American-Statesman  
Capitol Bureau  
816 Congress Avenue  
Austin, Texas 78701  
(w/o enclosures)

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<sup>1</sup>As we resolve this matter under section 552.103(a), we need not address the applicability of section 552.111 at this time.