



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1995

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

OR95-1436

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# 20854.

The Texas Department of Insurance (the "department") received an open records request for certain records that you contend may be withheld from the public pursuant to sections 552.103(a), 552.107(1), and 552.111 of the Government Code. The department submitted representative samples of the requested information.

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). 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). However, the exception does not apply to the bulk of the information you enclosed, correspondence which the opposing party to the anticipated litigation has seen. Open Records Decision Nos. 349 (1982), 320 (1982). When the opposing party in anticipated litigation has seen the requested information, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). We have marked one document that the

department may withhold from disclosure based on section 552.103 of the Government Code.<sup>1</sup>

Section 552.107(1) of the Government Code, generally excepts from required public disclosure client confidences to an attorney and attorney legal advice and opinion. Open Records Decision No. 574 (1990). You marked two memoranda as within this exception; both are titled "Request for Disposition" and both are from a compliance specialist to the chief of the Compliance Intake Section, whom you say is an attorney. The attorney-client privilege applies to a communication between a client's lawyer and the lawyer's representative, when made for the purpose of facilitating the rendition of professional legal services. Tex. R. Civ. Evid. 503(a)(2).

This office does not apply section 552.107(1) to purely factual communications, unless obtained by an attorney as a client confidence. See Open Records Decision Nos. 574 (1990), 462 (1987). The information in these memoranda consists of an analysis of the facts and a recommendation as to the disposition of the case. We conclude that the department must release the factual portions of the memoranda. The department may withhold the portions of the memoranda containing legal analysis and recommendations based on section 552.107(1). We have marked the documents accordingly.

You urge that section 552.111 applies to information that you say is "attorney work product and party communications which were made subsequent to the occurrence upon which the anticipated administrative litigation is based," referencing rule 166b(3)(a) and rule 166(3)(d) of the Texas Rules of Civil Procedure. You submitted the "Case Notes" of a compliance specialist, an attorney's "Case Log" and a note from the director of Legal Services to a staff attorney.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. See Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. See *id.*

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<sup>1</sup>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).

The "Case Notes" and "Case Log" are not interagency or intraagency memoranda. Moreover, they do not contain advice, recommendations, or opinions reflecting the policymaking process of the department; they contain purely factual entries. Thus, the department may not withhold them based on section 552.111 of the Government Code. The department may withhold from disclosure portions of the note from the Legal Services director under section 552.111.

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.<sup>2</sup> If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/ch

Ref.: ID# 20854

Enclosures: Marked documents

cc: Ms. Shannon Ware  
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Houston, Texas 770588-2633  
(w/o enclosures)

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<sup>2</sup>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

