



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1997

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

OR97-1142

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34551.

The Texas Department of Insurance (the "department") received a request concerning A-Affordable Insurance Services Inc., North American Services Inc, North American Acceptable Corporation, and two named individuals. You claim that the requested information is excepted from required public disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.112 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated 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. Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 (1991) at 7. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You state that the subjects of this request are under review for possible violations of the state's insurance laws. You state that the alleged violations, when penalties are assessed, would culminate in an administrative contested case. In this instance, the department has supplied this office with information which shows that an investigation has taken place, and the department will take enforcement action as authorized by statute. We conclude that litigation is reasonably anticipated. We additionally find that the documents submitted by

the department are related to the reasonably anticipated litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103. Because we are able to make a determination under section 552.103, we do not address your additional arguments. We note, however, that the requested records may be confidential by law. If the department receives a subsequent request for this information, you should re-assert your arguments against disclosure at that time.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 34551

Enclosures: Submitted documents

cc: Mr. Thomas E. Laird
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(w/o enclosures)