



October 5, 1999

Ms. Katherine Minter Cary  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-2823

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128134.

The Office of the Attorney General (the "OAG") received a request for all information relating to the OAG's investigation into the Allstate Insurance Company's ("Allstate") "Do I Need An Attorney?" campaign. Although you state that much of the responsive information has been released to the requestor, you claim that some of the requested documents are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample documents.<sup>1</sup>

Initially, you argue that some of the requested documents are protected from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section

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<sup>1</sup>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). 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.

encompasses information protected by other statutes. You represent that some of the submitted documents were obtained pursuant to a Civil Investigative Demand (“CID”) issued under the Texas Deceptive Trade Practices-Consumer Protection Act, section 17.61 of the Texas Business and Commerce Code (the “DTPA”). Section 17.61 authorizes the OAG’s consumer protection division to serve on a person it believes may be in possession of documentary material relevant to an investigation of a possible violation of the DTPA a CID requiring the person to produce the relevant material. Documents produced in response to a CID are confidential under section 17.61(f) of the Business and Commerce Code.

Section 17.61 provides in pertinent part as follows:

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the persons who produced the material. . . .

Therefore, pursuant to section 552.101, the OAG must withhold from required public disclosure all documentary material the consumer protection division obtained pursuant to the CID.

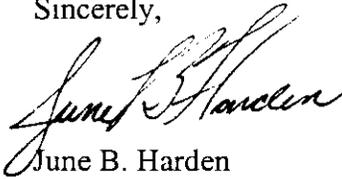
You also seek to withhold the remaining documents under section 552.103. Section 552.103(a) of the Government Code, the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

After reviewing your arguments and the submitted documents, we conclude that litigation is reasonably anticipated in this instance. We also find that the submitted documents are related to the reasonably anticipated litigation for the purposes of section 552.103(a) and may be withheld. We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the

litigation is not excepted from disclosure under section 552.103(a) and must be disclosed.<sup>2</sup> We also note that documents filed with a court are generally considered public and may not be withheld. *Cf. Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Finally, the applicability of section 552.103(a) ends once the litigation has 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 128134

Encl. Submitted documents

cc: Mr. Kenneth T. Goldstein  
Krislov & Associates, Ltd.  
222 North La Salle Street, Suite 2120  
Chicago, Illinois 60601-1086  
(w/o enclosures)

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<sup>2</sup>Documents subject to release must be redacted to the extent they reveal information produced in response to a civil investigative demand.