



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 21, 1996

Elizabeth C. Lara  
Legal Assistant  
Legal and Compliance, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-2156

Dear Ms. Lara:

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# 102194.

The Texas Department of Insurance (the "department") received a request for information concerning particular individuals and an insurance agency which encompassed:

licensing, administrative actions and cases. . . . I am particularly interested in obtaining copies of sworn or unsworn statements, depositions or the like. I also request information on the surrendering of a named individual's license or revocation of his license.

However, the department seeks to withhold portions of the requested information based on sections 552.101 of the Government Code. You enclosed representative samples of the information the department seeks to withhold.<sup>1</sup>

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<sup>1</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 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.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth day after the date of receiving the written request. The department acknowledges it did not request a decision from this office until more than ten days after the requestor's written request. Therefore, we conclude, and the department joins in the acknowledgment, that it failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. The department raises section 552.101 through the application of an individual's common-law and constitutional right to privacy as the compelling interest to overcoming the presumption of openness. We now examine the exception you have asserted.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You suggest that disclosure of the requested information would violate the individuals' common-law right to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.101 also excepts information that is confidential under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Accordingly, we shall concentrate our examination on the common-law privacy exception.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of financial information, *see* Open Records Decision Nos. 373 (1983) (common-law privacy

protects assets and income source information), 523 (1989) (credit reports, financial statements, and financial information regarding an individual applicant for the veterans' land program are excepted by common law privacy), *see* Open Records Decision Nos. 600 (1992), 545 (1990) (personal financial information not relating to the financial transaction between an individual and a governmental body). We have reviewed the documents submitted for our consideration. We observe that the information deals with the specific automobile insurance choices of private sector consumers involving the use of finance companies. It is also observed that the names and other identifying detail appear to not be of any legitimate concern to the public, although the public has a legitimate interest in complaints against those individuals who are licensed or supervised by the state. Open Records Decision No. 525 (1989). Accordingly, the information identifying or tending to identify private sector consumers must be withheld under constitutional or common-law privacy.

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

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102194

Enclosures: Submitted documents

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(w/o enclosures)