



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 18, 1997

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

OR97-1630

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# 107347.

The Texas Department of Insurance (the "department") received a request for information concerning a particular deceased individual who, until his death, was the subject of a department investigation. The department asserts that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111 and 552.115(2) of the Government Code. We have reviewed your arguments and examined the submitted documents.

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 individual's 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, 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)).

This office has found that some kinds of financial information is excepted from required public disclosure under constitutional or common-law privacy. *See* Open Records Decision Nos. 523 (1989) (credit reports, financial statements, and financial information regarding an individual applicant for the veterans' land program are excepted by common law privacy), 373 (1983) (common-law privacy protects assets and income source information); *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 observe that the information submitted deals with the specific automobile insurance choices of private sector consumers involving the use of finance companies. We agree that the information on the documents you have marked identifying or tending to identify private sector consumers must be withheld under common-law privacy.

Next we address section 552.107(1) which protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records Decision No. 574 (1990). We agree that section 552.107(1) excepts from disclosure in their entirety the memorandums dated October 9, and 10, 1996 as well as that of December 10, 1996. However, the memorandum dated October 8, 1996 is almost entirely factual and, except for the marked portions,<sup>1</sup> it must be released.<sup>2</sup>

Section 552.115 provides that a death record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from required public disclosure "except that a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official." First, it does not appear that a death certificate is responsive to the request. Second, even if it is, as section 552.115 only applies to a death certificate maintained by the bureau of vital statistics, the department may not withhold any requested death certificate pursuant to that provision. *See* Open Records Decision No. 338 (1982). If the document is responsive to the request, the commission may not withhold it under section 552.115.

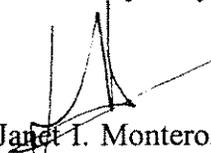
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<sup>1</sup>We note in the October 8, 1996 memorandum the presence of financial information concerning an individual which may be protected by a common-law right or privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). Therefore, these names of the private individuals must be withheld under section 552.101 of the Government Code.

<sup>2</sup>As we address the issues presented under sections 552.101, 552.107 and 552.115(2) of the Government Code we need not address the issues presented under section 552.111 of the Government Code.

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/ulg

Ref.: ID# 107347

Enclosures: Submitted documents

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(w/o enclosures)

