



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1997

Ms. Nancy Barbour  
Staff Attorney  
Legal and Compliance, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR97-2387

Dear Ms. Barbour:

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# 109874.

The Texas Department of Insurance (the "department") received a request for all formal complaints against Aetna U.S. Healthcare. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. In addition, because you assert that a third party's privacy or property interest may be implicated by this request, you raise section 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents you have submitted.<sup>1</sup>

Pursuant to section 552.305 of the Government Code, this office notified Aetna U.S. Health Plans of Texas ("Aetna") of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Aetna responded to the notice, asserting that the requested information is excepted from required public disclosure based on Government Code section 552.101 in

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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 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.

conjunction with various confidentiality statutes and the common-law right to privacy. Aetna also asserts that the requested complaints may contain trade secret information which is excepted from disclosure under section 552.110 of the Government Code.

Section 552.101 of the Government Code encompasses common-law and constitutional privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that common-law privacy protects certain financial information, including information about personal financial decisions. See Open Records Decision No. 600 (1992) at 9-12. In the instant case, we believe that the identity of Aetna's enrollees is private information. Therefore, the department must redact all identifying information, including names, street addresses, telephone numbers, social security numbers, names of family members, names of employers, and individual and group policy numbers.<sup>2</sup> We have marked the types of identifying information which must be withheld from disclosure. We note that the subject of one complaint is deceased. The common-law right of privacy lapses upon death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). Therefore, you must release this and all remaining documents in their entirety.<sup>3</sup>

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.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>Common-law privacy may also protect an individual's medical history, although it does not protect all medically related information. See Open Records Decision No. 478 (1987). Individual determinations are required. See Open Records Decision No. 370 (1983). However, in light of our conclusion in the instant case that the enrollees' identities must be withheld from disclosure, such individual determinations regarding medically related information is unnecessary.

<sup>3</sup>The redacted requested complaints do not contain information protected by section 552.110 nor do they contain information protected by the confidentiality statutes raised by Aetna.

JBH/alg

Ref.: ID# 109874

Enclosures: Marked documents

cc: Mr. Charles Fordtran  
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