



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1997

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

OR97-2434

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# 109873.

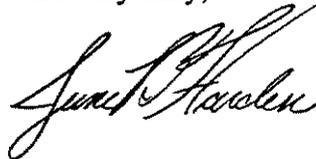
The Texas Department of Insurance (the "department") received a request for all formal complaints against One Health Plan of Texas, Inc. ("One Health Plan"). You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Since the property rights of a third party are implicated by the release of some of the requested information here, this office notified One Health Plan of this 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). One Health Plan did not respond to our notice, therefore, we have no basis to conclude that the company's information is excepted from disclosure under section 552.110. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. Consequently, the department may not withhold the requested information under section 552.110.

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 One Health Plan'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.¹

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

JBH/alg

Ref.: ID# 109873

Enclosures: Marked documents

¹Common-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 are unnecessary.

cc: Mr. Charles E. Fordtran
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