



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1998

Mr. Ryan Tredway
Staff Attorney
Texas Department of Insurance
Legal and Compliance Division, MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0217

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111991.

The Texas Department of Insurance (the "department") received a request for "all consumer complaints relating to Pacificare of Texas, Inc., which complaints have been received since Oct. 1, 1996, and which relate to deceptive or misleading advertising." Initially, you asserted that the requested information was excepted from disclosure under section 552.101 of the Government Code in conjunction with article 20A.17, section 17(b)(4) of the Insurance Code. However, you have withdrawn this claim. You indicate that "[s]ome of the requested information may involve the proprietary or property interests of Pacificare." Therefore, you raise section 552.305 of the Government Code on behalf of Pacificare. You also contend that some of the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Pursuant to section 552.305 of the Government Code, we notified Pacificare of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. Pacificare did not respond to our notification.

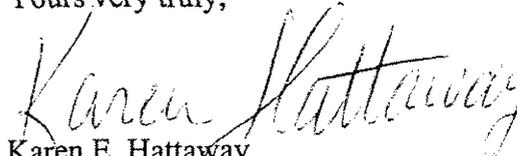
Neither the department nor Pacificare have objected to disclosing the requested information based on section 552.110 of the Government Code, which protects the proprietary interests of private parties. Thus, we conclude that the requested information is not excepted from disclosure pursuant to section 552.110.

The requested documents include confidential medical information not covered by a confidentiality statute, yet protected from required public disclosure based on the common-law right to privacy. See *Industrial Found of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976),

cert. denied, 430 U.S. 931 (1977). Information is protected by the doctrine of common-law privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See id.* While common-law privacy may protect an individual's medical history, 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)*. This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, *Open Records Decision No. 455 (1987)*; the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, *Open Records Decision No. 422 (1984)*; the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, *Open Records Decision No. 343 (1982)*. In addition common-law privacy may protect certain financial information, including information about personal financial decisions. *See Open Records Decision No. 600 (1992)* at 9-12. In this case, we believe that withholding information that identifies the complainants will protect their privacy interests. We have marked the types of identifying information that the department must withhold from disclosure under section 552.101 in conjunction with the common-law right to privacy. With the exception of this marked information, the requested information must be released.

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 upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111990

Enclosures: Marked documents

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