



May 17, 1999

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-1344

Dear Ms. Grace:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 124098.

The City of Houston (the “city”) received a request for “any and all lists of names, social security numbers, addresses, and telephone numbers for the City of Houston employees who have not designated a Primary Care Physician.” You submit to this office for review the information which you assert is responsive. You contend that the submitted records are excepted from required public disclosure by sections 552.101, 552.110, and 552.117 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Based on the city’s brief to this office and the requestor’s letter, it appears that the city did not seek an open records decision from this office within the statutory *ten business* day deadline. *See* Gov’t Code § 552.301. The city’s delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of sections 552.101, 552.110, and 552.117 provide such a compelling reason. *See* Gov’t Code § 552.352 (distribution of confidential information is criminal offense).

As a preface to our discussion, we must consider your assertion that the requested information implicates “two separate and distinct contracts.” “One contract is for a traditional Health Maintenance Organization (HMO), under which NYLCare insures those who choose to enroll in that plan The other contract is for a Point of Service plan, under which the City is the insurer and NYLCare acts solely as an administrator.”¹ Accordingly,

¹You have advised our office that NYLCare Health Plans of the Gulf Coast “was recently acquired by Aetna U.S. Healthcare.”

this ruling only addresses the application of the claimed exceptions to the information in Exhibit 2 which you contend is responsive.

We first address whether the submitted records are subject to the common-law right of privacy. Section 552.101 encompasses the common-law right to privacy. Section 552.102(a) protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”² The test to determine whether information is private and excepted from disclosure under common-law privacy doctrine, which is encompassed in sections 552.101 and 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.).

Because there is a legitimate public interest in the activities of public employees in the workplace, information about public employees is commonly held not to be excepted from required public disclosure under common-law privacy. *See generally* Open Records Decision Nos. 470 (1987), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). This office has concluded in the past that common-law privacy does not protect information about the educational training of an applicant or employee; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. Open Records Decision No. 455 at 9 (1987).

On the other hand, common-law privacy generally protects information about an individual’s overall financial status and financial history. Open Records Decision No. 373 at 3 (1983) (background financial information is type of intimate information generally protected under common-law privacy). We have previously determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy. Open Records Decision No. 600 at 10 (1992). However, information revealing that an employee participates in a group insurance plan funded by the city or state or has enrolled persons in addition to himself is not excepted from disclosure. *Id.* For example, this office has held that an employee’s participation in the Texas Municipal Retirement System or in a group insurance plan funded by the governmental body is not excepted from disclosure under common-law privacy. Open Records Decision No. 600 at 9-10 (1992), 480 (1987). However, information relating to the employee’s choice of carrier and his election of optional coverages is excepted from disclosure. *Id.* The information at issue pertains solely to the employees’ non-designation of primary care physicians, and as such cannot be deemed highly intimate or embarrassing. *Cf.* Open

²Section 552.102(a) may be invoked only when information reveals “intimate details of a highly personal nature.” Open Records Decision No. 315 (1982).

Records Decision No. 557 (1990) and authorities cited therein (identities of individuals performing services for government not protected by privacy).

You assert that “[w]hom individual City employees choose as their doctor, or whether they elect not to choose one within the system, is a personal medical decision involving an intimate aspect of each employee’s personal life.” We disagree. In this instance, the requestor does not seek the name of a doctor, but simply whether a public employee has selected a primary care physician. Under the facts and records presented, we do not believe that an employee’s non-designation of a “Primary Care Physician” is subject to protection under section 552.101 in conjunction with common-law privacy.

We next consider your assertion that the records at issue include information that may be confidential pursuant to section 552.117 of the Government Code. Section 552.117 of the Government Code exempts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires the city to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). In this instance, if the individuals whose information is at issue have “requested that this information not be made available to the public,” then such information must be withheld. You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Accordingly, you must redact the information subject to section 552.117 wherever it is located in the submitted records.³

Finally, we address your argument in support of the applicability of section 552.110 to the requested information. Pursuant to section 552.305, we notified Aetna U.S. Healthcare (“Aetna”), whose proprietary interests may be implicated by this request for information, and provided them with an opportunity to claim that the information at issue is excepted from disclosure. *See* Gov’t Code § 552.305; Open Records Decision No. 542 (1990). The notification states that if the company does not respond within 14 days of receipt, this office will assume that the company has no privacy or property interest in the requested information. Since Aetna did not respond to our notification, we assume that the company

³We also note that if an individual’s social security number was obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, it is confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code. Section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information.

has no property or privacy interest in the information. Therefore, we have no basis to conclude that the information about Aetna is excepted from required public disclosure.

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 questions about this ruling, please contact our office.

Sincerely

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124098

Encl: Submitted documents

cc: Mr. Zakiya Thomas
People 1st Healthcare Network, Inc.
1010 Lamar-Suite 210
Houston, Texas 77002
(w/o enclosures)

Ms. Kate Bowen
Regional Counsel
Aetna U.S. Healthcare
2777 Stemmons Freeway, Suite 300
Dallas, Texas 75207
(w/o enclosures)

Mr. Joe Blanford
General Manager, Houston
Aetna U.S. Healthcare
2425 West Loop South, Suite 1000
Houston, Texas 77027-4208
(w/o enclosures)