



January 13, 2000

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-0132

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131066.

The City of Midland (the “city”) received a request for a copy of the city’s current monthly bill from the American Family Life Assurance Company of Columbus (“AFLAC”). You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section also applies to information made confidential by the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must 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. *See id.* Previous decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee’s allocation of his salary to a voluntary investment

program offered by his employer is a personal investment decision, and information about that decision is excepted from disclosure by a common law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992).

You explain that the information at issue relates to the “participation of public employees in a supplemental insurance program which is in no way publicly funded.” Based on your representations, we conclude that the information is protected by privacy, and must, therefore, be withheld.

We note, once again, that the city is using the section 552.305 notification letter to notify persons whose privacy interests may be implicated by the release of the requested information. We do not believe that such notification is required under section 552.305. A section 552.305 letter should be sent to a third-party when the city receives a request for that party’s *proprietary* information.¹ In the past, this office was responsible for notifying third parties of their opportunity to submit comments under section 552.305 of the Government Code. However, the responsibility of notifying third parties under section 552.305 is now upon the requesting governmental body. *See* Gov’t Code § 552.305(d). We recognize that this recent procedural change has caused a fair amount of confusion. However, your office has been counseled on the proper use and requirements of the section 552.305 notification letter. Again, the city is only required to send the section 552.305 notification letter when a person’s *proprietary* information is at issue in a request for a decision to this office. If you have additional questions regarding the section 552.305 notification process, please contact the Open Government Hotline, toll free, at 877/673-6839 for immediate clarification.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹In addition to notifying its employees, the city also notified AFLAC of the request for information. AFLAC responded to the notice by arguing, among other things, that the requested information was protected under section 552.110 as a confidential customer list. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). Because we are able to make a determination under section 552.101, we need not address AFLAC’s arguments under section 552.110.

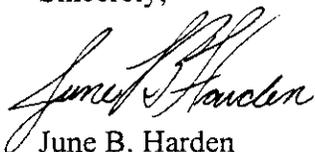
full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 131066

Encl. Submitted documents

cc: Mr. Chris King
CONSECO Health
4018 Trinity
Midland, Texas 78707
(w/o enclosures)

All third party interests have been copied.