



February 15, 2000

Ms. Sara Shiplet Waitt
Texas Department of Insurance
Legal & Compliance
P O Box 149104
Austin, Texas 78714-9104

OR2000-0535

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132217.

The Texas Department of Insurance (the “department”) received a request for the names and addresses of all individuals who filed complaints against Prudential HealthCare HMO or Prudential Health Care Plan, Inc. during 1998 and 1999. You explain the department “does not have any complaints against Prudential HealthCare HMO.” You have submitted for our review documentation of four complaints, which you indicate to be representative samples of information responsive to the request.¹ You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and 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 encompasses common law privacy and excepts from public disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal information must be withheld from the public on the basis

¹In 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.

of common law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). This office has repeatedly found that information identifying the enrollees in a particular health insurance plan is excepted from public disclosure, because such information implicates the common law right of privacy of the enrollee.² *See, e.g.*, Open Records Decision No. 600 at 9-12 (1992) (personal financial choices concerning insurance are generally confidential). The department must accordingly withhold the names and addresses of enrollees in Prudential Health Care Plan, Inc. Among the four samples submitted for our review, we note three of the complainants are indicated to be enrollees. In the fourth sample, the complainant is a family member of the enrollee. Based on the above assumptions that the submitted samples are truly representative of the requested records as a whole, and that none of the named enrollees is deceased, we thus conclude the requested names and addresses are excepted from disclosure under section 552.101 in conjunction with the common law right of privacy.

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 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

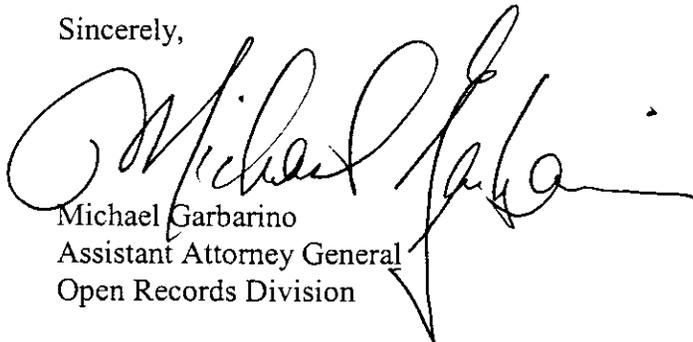
²If the enrollee is deceased, however, identifying information pertaining to that enrollee is not excepted from disclosure because the common law right of privacy lapses upon death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). We have no indication that any of the enrollees in the submitted samples are deceased.

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID#132217

Encl. Submitted documents

cc: Mr. Mordechai Kaz
2807 Settlement Drive
Round Rock, Texas 78664
(w/o enclosures)