OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 4, 2000

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

OR2000-1736

Dear Mr. Magee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134761.

The Texas Department of Insurance (the "department") received a request for information concerning automobile insurance claims, policies, and complaints related to the use of after market automobile parts. You have submitted for our review a representative sample of the information at issue, consisting of one memorandum and several files concerning complaints received by the department.[1] We assume you have already released information that is responsive to the other categories of information contained in the request.[2] You claim that parts of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Section 552.301(b) requires the governmental body to "ask for the attorney general's decision and state the exceptions that apply no later than the 10th business day after the date of receiving the written request." You state that the department received the request on February 16, 2000. On March 2, 2000, you submitted to our office your request for a decision, raising sections 552.101 and 552.111

[1]In 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.

[2]*See* Gov't Code § 552.221(a); Open Records Decision Nos. 664 (2000)(governmental body must release information promptly, without delay), 665 (2000)(governmental body may not seek attorney general ruling when governmental body identifies information and reasonably believes that it is not subject to exception from disclosure under Public Information Act).

of the Government Code as exceptions to required disclosure. Because these exception were properly raised prior to the statutory time limit, we will discuss the application of these sections to the information at issue later in this ruling. However, you did not raise the additional exception for withholding the information under section 552.130 until March 9, 2000, more than ten business days from the date you received the request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(b) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The application of section 552.130 of the Government Code provides a compelling reason sufficient to overcome the presumption that the information is public. Therefore, we will consider your claim under section 552.130 following our consideration of your other claimed exceptions.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also 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).

Upon review of the information at issue, we conclude that the information you have marked in one of the complaints you submitted to this office is not highly intimate or embarrassing. Therefore, common law privacy does not protect the medical information contained in the complaint. Consequently, the department may not withhold the medical information from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy.

However, some of the medical information may nonetheless be withheld under section 552.101 in conjunction with section 201.402(b) of the Occupations Code, which makes confidential records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor. The submitted complaint information includes a document which contains the identity and treatment of a patient by a chiropractor. Accordingly, we have marked the document which must be withheld from disclosure pursuant to section 552.101.

You contend that section 552.101 and the common law right to privacy protects certain financial information contained in the submitted complaints. As noted above, common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 683-85. We agree that certain information you have marked is personal financial information excepted from disclosure under section 552.101 and common law privacy. However, we do not find that all of the information you have bracketed may be withheld from disclosure. You must withhold from disclosure the identifying information you have bracketed, including names, addresses, phone numbers, claim numbers and policy numbers. The remaining information in the complaints, including the financial information, must be released to the requestor.

You assert that certain information you have submitted is excepted from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. In this instance, we believe that the submitted memorandum reflects the opinion, advice or recommendations on a department policy matter. Thus, the department may withhold the submitted memorandum from disclosure under section 552.111.

You assert that certain information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold from disclosure the driver's license numbers, vehicle registration numbers, and title certificate. You must release any other information that is not specifically addressed by one of the above exceptions.

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 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,

Carla Gay Dickson

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 134761

Encl. Marked documents

cc: Mr. Thomas Cusack
Post & Schell
1800 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-7480
(w/o enclosures)