



May 8, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-1768

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# 134959.

The Department of Insurance (the “department”) received a request for all consumer complaints filed against an insurance agent, including any sanctions or penalties assessed by the state insurance board. You assert that some of the requested information will be provided to the requestor. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.¹

You assert that the submitted information contains personal financial information which is protected by section 552.101 and common law privacy. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that 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 the information must be of no legitimate concern to the public. *Id.*

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.

This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). We find that the decision to obtain life insurance is a private, financial decision that is excepted from disclosure under common law privacy pursuant to section 552.101 of the Government Code. Because the decision to purchase life insurance is protected by common law privacy, the department must redact the insureds' identifying information.² Identifying information includes the insured's name, address, policy and bank account numbers, and the beneficiary's name if the beneficiary's name or relationship with the insured reveals the identity of the insured. The remaining requested information must be released to the requestor.³

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).

²In your brief, you point out that in some instances this office redacts the identities of the consumers whereas in other instances, this office redacts only the personal financial information. Although you request guidance from this office regarding the proper method to protect an individual's privacy rights, the determination must be made on a case-by-case basis. Generally, we withhold the identity of the consumer when the consumer's personal financial decision is protected by common law privacy. In such instances, release of the consumer's identity with the personal financial information withheld does not protect the consumer's personal financial decision.

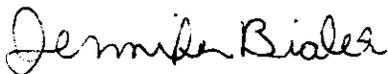
³We note that you have marked both the identifying information and the personal financial information. Because we have determined that you must withhold the identifying information, you must release the financial information, such as the policy amounts, which you have marked.

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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/nc

Ref: ID# 134959

Encl. Submitted documents

cc: Ms. Donna Ziriak
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(w/o enclosures)