



September 4, 2001

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

OR2001-3913

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# 151470.

The Texas Department of Insurance (the "department") received a request for the entire file related to the requestor's insurance business, including all licenses and supporting documentation. You claim that some of the responsive information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the requestor's comments that the department's fraud unit withheld information without requesting a decision from this office. In a letter dated August 15, 2001, the department explains that the fraud unit received a previous determination in Open Records Letter No. 95-1536 (1995) to withhold information acquired by the fraud unit under article 1.10D of the Insurance Code. *See also* Open Records Decision No. 608 (1992) (finding that material and information acquired by the department fraud unit and which the Commissioner of Insurance determines must remain confidential is excepted from public disclosure under section 552.101 in conjunction with article 1.10D of the Insurance Code). As the criteria for a previous determination appear to have been met, the department was not required to request a decision to withhold information that is confidential under article 1.10D of the Insurance Code. *See* Open Records Decision No. 673 (2001) (providing criteria that must be met to rely on a prior ruling as "previous determination").

You assert that portions of the submitted information are protected under section 552.101 in conjunction with 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.* 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. 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). In this instance, we find that there is no legitimate public interest in the personal financial information, such as policy numbers and premium and coverage amounts, that you have marked. Accordingly, we agree that you may withhold the information that you have marked under section 552.101 in conjunction with common law privacy.

You also argue that the insurance agent's social security number which is excepted by section 552.101 in conjunction with section 51.251 of the Occupations Code. Section 552.101 also encompasses information protected by statute. A note following section 51.251 of the Occupations Code provides the following:

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occupations Code § 51.251. Therefore, an applicant's or licensee's social security number that is provided to the licensing agency must be withheld under section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code. Accordingly, you must withhold the insurance agent's social security number under section 552.101.

You also assert that some of the submitted information is excepted under section 552.107(1) of the Government Code. Section 552.107(1) excepts information that an attorney of a political subdivision cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or

advice. ORD 574 at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* You have submitted one e-mail from an attorney to a client which you have marked as being excepted under section 552.107(1) of the Government Code. After reviewing the submitted e-mail, we agree that you may withhold the e-mail under section 552.107(1) of the Government Code.

You also claim that some of the submitted information may be withheld under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific employee do not relate to making of new policy but merely implement existing policy); Open Records Decision No. 615 at 5-6 (1993). *But see* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111).

After reviewing the submitted information for which you claim section 552.111, we have marked some information that reveals advice, recommendations, opinions, and other material reflecting the policymaking processes of the department and, therefore, may be withheld under section 552.111 of the Government Code. However, the remaining information is purely factual and may not be withheld under section 552.111 of the Government Code.

You also contend that the submitted information contains a draft letter. The draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, and may therefore be withheld under section 552.111 of the Government Code. *See* Open Records Decision No. 559 (1990). Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.* You state that the final version of the document was mailed to the requestor. Thus, we agree that you may withhold the draft under section 552.111 of the Government Code.

You also contend that portions of the submitted information are excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure 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, we agree that you must withhold the driver's license numbers and VIN numbers which you have marked under section 552.130(a) of the Government Code.

In conclusion, you must withhold the personal financial information which you have marked under section 552.101 in conjunction with privacy. You must also withhold the agent's social security number pursuant to the note following section 51.251 of the Occupations Code. Further, you may withhold the e-mail under section 552.107(1) and the information we have marked under section 552.111 of the Government Code. You must withhold the driver's license numbers and VIN numbers which you have marked under section 552.130. The department must release the remaining submitted information.

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).

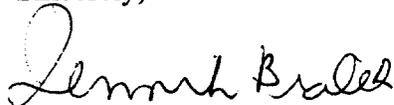
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 151470

Enc: Marked documents

c: Mr. Mark E. Burroughs  
4667 Merwin  
Houston, Texas 77027  
(w/o enclosures)