



December 13, 2001

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

OR2001-5811

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# 156139.

The Texas Department of Insurance (the "department") received a request for copies of specified complaints against J.C. Penney Life Insurance Company ("J.C. Penney"). You claim that some of 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 sample of information.¹

You claim that portions of the requested information are confidential under section 552.101 in conjunction with common law privacy rights. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. For information to be protected from public disclosure pursuant to this right, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial*

¹We assume that the "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.

Accident Board, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public 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 held that personal financial information not related to a financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Furthermore, information identifying the enrollees in a particular insurance plan is excepted from public disclosure because such information implicates the common law right of privacy of the enrollee. *See, e.g.*, Open Records Decision No. 600 at 9-12 (personal financial choices concerning insurance are generally confidential). The department must therefore withhold the identifying information of enrollees in insurance plans pursuant to section 552.101 in conjunction with the common law right of privacy. Identifying information includes the insured's name, address, telephone number, and social security number, as well as names of the insured's family members. Here, you have submitted information regarding multiple complaints. The information indicates that the complainants are insured under J.C. Penney insurance policies. We therefore agree that you must withhold the identifying information of the complainants that you have marked under section 552.101 of the Government Code in conjunction with common law privacy. However, an insured's policy and certificate numbers do not identify the insured. Therefore, the department must release the policy and certificate numbers. We have marked some additional information that must be withheld under section 552.101.

The submitted documents also appear to contain information that is protected by section 552.136. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act, which makes bank account numbers confidential. Senate Bill 694 was passed on May 14, 2001, and became effective when it was signed by the Governor on May 26, 2001. It provides, in relevant part, as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Thus, pursuant to section 552.136, we have also marked what appear to be bank account numbers that you must withhold.

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 Texas Building and Procurement 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 black ink that reads "Kristen Bates". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156139

Enc. Submitted documents

c: Mr. Nolan Awbrey
Hare, Wynn, Newell & Newton
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(w/o enclosures)