



October 10, 2002

Mr. Steve Martin  
Senior Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR2002-5756

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170496.

The Texas Department of Banking (the “department”) received a request for “complaints and/or reports of any kind related to funeral homes in Dallas County that arrived at [the department] during the last 12 months.” You state that the department has provided some information to the requestor but claim that highlighted portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 154.055 of the Finance Code provides:

- (a) Information relating to the financial condition of a seller obtained by the department directly or indirectly, through examination or otherwise, other than published statements, is confidential.
- (b) The files and records of the department relating to the financial condition of a seller are confidential.

(c) The commissioner may disclose the information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner considers disclosure to be in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

The submitted information consists of information relating to four complaints against four different funeral homes involving four different pre-paid funeral contracts. The most recent of these contracts was entered into in 1997. You have not explained, nor are we able to discern, how the release of the information you have highlighted indicates or relates to the financial condition of these sellers. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must explain why claimed exception applies). Therefore the department may not withhold the highlighted information pursuant to section 552.101 of the Government Code in conjunction with section 154.055 of the Finance Code.

Section 552.101 of the Government Code also encompasses the common law right of privacy, which protects information if it is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate public interest. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). We find that the decision to obtain pre-funeral insurance is a private, financial decision that is excepted from disclosure under common law privacy pursuant to section 552.101 of the Government Code. Ordinarily, we would require the department to redact each insured's identifying information in order to protect their privacy interest in making this personal financial choice. In this instance, however, you inform us that the identities of the insureds have already been released. We therefore agree that in this instance you may withhold the marked financial information and other personal details in order to protect these individuals' privacy. We note, however, that social security numbers do not constitute financial information, and this office has long held that social security numbers are not the type of intimate and embarrassing information protected under common law privacy. Open Records Decision No. 169 (1977).

We note, however, that a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622* (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers you have highlighted are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you

should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we address your argument regarding the email address contained in the submitted records. Section 552.137 of the Government Code provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” Unless the owner of this e-mail address has affirmatively consented to its release, the department must withhold the marked e-mail address in accordance with section 552.137. *See* Gov’t Code § 552.137(b). We note, however, that section 552.137 does not apply to a business’ general e-mail address or website address.

In summary, pursuant to section 552.101, the department must withhold the information that we have marked as being protected by common law privacy. The social security numbers must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. Under section 552.137, the department must withhold the marked email address unless its owner has consented to its release. The remaining information must be released.

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.

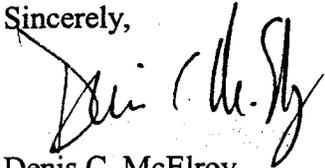
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 170496

Enc. Submitted documents

c: Mr. Chris Siderius  
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(w/o enclosures)