



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 6, 2003

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

OR2003-0810

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 176136.

The Texas Department of Insurance (the "department") received a request for information pertaining to credit scoring for property and casualty policies issued by various companies. You indicate that the department will release some responsive information to the requestor. You also inform us that, in accordance with previous determinations issued by this office, the department has withheld information it obtained during the course of its examinations of insurance entities. Open Records Decision No. 640 (1996) (providing that information obtained by department during course of examination is confidential by law), Open Records Letter No. 99-1264 (1999) (providing that department may rely on Open Records Decision No. 640 as previous determination); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). Finally, you claim that portions of the submitted complaint records are excepted from public disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered the

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<sup>1</sup>In his written comments to this office, the requestor states that he does not seek public e-mail addresses and does not object to the department withholding such addresses from his review. Consequently, we need not address the department's claims under section 552.137.

comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any interested party may submit comments explaining why information should be released or withheld from public disclosure).

Initially, we address the requestor's argument that the department did not timely submit its request for a ruling; thus, the requested information is presumed public and must be released. *See* Gov't Code § 552.302 (providing that if governmental body does not timely request ruling, requested information must be released unless there is compelling reason to withhold). Section 552.301(b) provides that a governmental body must ask for an attorney general's decision within a reasonable time but not later than the tenth *business* day after the date of receiving the written request. Thus, in determining a governmental body's deadline for submission, this office only counts those days the entity was open for business. In this instance, the requestor e-mailed his request to the department on Saturday, November 9, 2002. For purposes of the Act, the department would have normally received this request on the next business day which would have been the following Monday. Since that Monday was Veteran's Day, however, the department did not receive the request until Tuesday, November 12. Accordingly, the department had until November 26, 2002 to submit its request for a ruling. Since this office timely received the department's request on November 26, 2002, we will address the merits of the claimed exceptions to disclosure.<sup>2</sup>

Next, we note that most of the submitted records are completed investigations that are subject to section 552.022(a)(1) of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). The completed investigations must, therefore, be released under section 552.022 unless the information is expressly made confidential under other law. Your claimed exceptions to disclosure, sections 552.101, 552.130, and 552.136, are mandatory exceptions that protect the interests of third parties. Thus, these exceptions are considered "other law" for purposes of section 552.022. Accordingly, we will address the department's arguments for all of the submitted records.

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<sup>2</sup>We note, for the requestor's benefit, that the department only raises mandatory exceptions to disclosure. Unlike discretionary exceptions that protect the interests of the governmental body, mandatory exceptions protect the interests of third parties and cannot be waived by the governmental body's failure to timely submit required information. Thus, even if the department's request had been untimely, this office would still have been compelled to address the merits of the department's arguments. *See* § Gov't Code 552.302; Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430-U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) 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). Generally, financial information about private individuals is the type of information that may be protected under common-law privacy. Open Records Decision No. 373 at 3 (1983). The documents at issue consist of credit reports and other consumer-related records containing private financial information. The submitted credit reports must be withheld in their entirety in order to protect the individuals' common-law privacy interests. *See generally* Open Records Decision No. 523 (1989) (stating that credit reports, financial statements, and financial information regarding individual may be excepted by common-law privacy). Furthermore, we agree that the policy numbers and premium amounts that you have marked, as well as those we have marked, are protected by common-law privacy. However, as we have ruled frequently in the past, social security numbers are not protected by privacy. *See* Open Record Decision Nos. 600 (1992), 455 (1987), 254 (1980), 169 (1977).

The social security numbers may, nevertheless, be excepted from required public 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). We note that a social security number may only be withheld under this federal provision if the number was obtained or is maintained by the governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The department has also marked bank account numbers which you claim are excepted from disclosure under section 552.136. Section 552.136 of the Government Code states that "[n]otwithstanding 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." Gov't Code § 552.136. Thus, we agree that the department must withhold the marked bank account numbers under section 552.136.

Finally, you have marked motor vehicle information which claim is excepted from disclosure under section 552.130 Government Code. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore we agree that, pursuant to section 552.130, the department must withhold the marked Texas drivers' license numbers and vehicle identification numbers from disclosure.

In summary, the department must withhold the credit reports and the bracketed financial information under section 552.101 in conjunction with the doctrine of common-law privacy. The marked bank account numbers must be withheld under section 552.136. The marked drivers' license and vehicle identification numbers must be withheld under section 552.130. Social security numbers must be released unless confidential under the federal law. The remaining requested 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

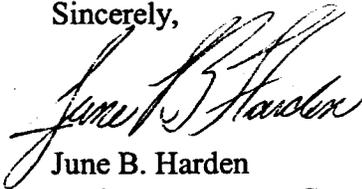
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 176136

Enc: Submitted documents

c: Mr. David Lewallen  
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Keller, Texas 76248  
(w/o enclosures)