



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2004

Ms. Cynthia Villarreal-Reyna
Agency Counsel Section Chief
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2004-3936

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201505.

The Texas Department of Insurance (the "department") received a request for information concerning "Alpha Indemnity Services, Inc. or Alpha Indemnity Services" ("Alpha"). You indicate that the department will release some responsive information to the requestor. You claim, however, that some information contained in complaints related to Alpha is excepted from disclosure under sections 552.101, 552.111, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The complaint files at issue consist of completed investigations. Thus, the department must release the submitted information pursuant to section 552.022(a)(1) unless the information is confidential under other law. While you contend that a portion of the submitted information is excepted from disclosure under section 552.111 of the Government Code, we note that section 552.111 is a discretionary exception that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022. *See* Open Records Decision No. 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department may not withhold any of the submitted information pursuant to section 552.111 of the Government Code. However, as your remaining claimed exceptions constitute other law for purposes of section 552.022, we will address the applicability of these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the submitted documents contain medical records that are confidential under the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Upon review, we note that the records at issue do not consist of medical records for purposes of the MPA. Thus, we determine that the department may not withhold any of the submitted information pursuant to the MPA.

You also contend that the submitted documents contain information that is excepted under section 552.101 in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the

information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information, and personal financial information not related to a transaction between an individual and a governmental body, are generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial information), 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, specific illnesses, procedures, and physical disabilities). Regarding personal financial information, however, this office has also determined that the essential facts about a financial transaction between an individual and a governmental body generally are subject to a legitimate public interest. *See* Open Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

You have marked information in the submitted documents that you contend is protected by common-law privacy as personal financial information. The information at issue consists of amounts paid and received by private parties in connection with premiums and claims for automobile insurance policies. Upon review of your arguments and the submitted information, we agree that the information you have marked is protected by common-law privacy and must be withheld pursuant to section 552.101. Furthermore, we have marked medical information in the submitted documents that is protected by common-law privacy and must be withheld under section 552.101.

We note that the submitted information relating to insurance policy claims and premiums contains account numbers that are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(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.

Gov't Code § 552.136. The submitted documents contain insurance policy numbers and bank account number information. The department must withhold this information, which we have marked, pursuant to section 552.136 of the Government Code.

Next, you have marked e-mail addresses in the submitted information that you seek to withhold under section 552.137 of the Government Code, which provides in part:

(a) Except as otherwise provided by this section, an 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public[.]

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of

communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the general e-mail address of a business. We agree that some of the e-mail addresses you have marked in the submitted documents are within the scope of section 552.137(a). You state that the department has not received consent to disclose these e-mail addresses. We therefore agree that the department must withhold these e-mail addresses, which we have marked, under section 552.137 of the Government Code. The remaining e-mail addresses, however, are business e-mail addresses and may not be withheld under section 552.137.

You have marked information in the submitted documents that you seek to withhold pursuant to section 552.130 of the Government Code. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements 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. We agree that the department must withhold the Texas motor vehicle driver's license and registration information you have marked pursuant to section 552.130 of the Government Code. We note, however, that information pertaining to a driver's license issued by another state is not excepted under 552.130 and may not be withheld on that basis.

Finally, we note that the submitted documents contain social security numbers of policy holders that may be excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *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 the social security numbers at issue 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 Government Code 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.

In summary, we have marked the information in the submitted documents that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy. We have marked bank account number information and insurance policy number information that must be withheld pursuant to section 552.136 of the Government Code. We have marked the e-mail addresses that the department must withhold pursuant to section 552.137 of the Government Code. The department must withhold the marked information pertaining to Texas motor vehicle driver's licenses, titles, and registrations pursuant to section 552.130 of the Government Code. Social security numbers contained in the submitted documents may be excepted under section 552.101 in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 201505

Enc: Submitted documents

c: Ms. Deborah G. Frink
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(w/o enclosures)