



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2005

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal and Compliance Division, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2005-08195

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231868.

The Texas Department of Insurance (the "department") received a request for information related to complaints filed with the department against a named agent and her agency within the last five years. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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

---

<sup>1</sup>We assume that the representative 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.

concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Personal financial information is generally excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 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). We note, however, that common-law privacy protects the privacy interests of individuals, but not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). However, the financial information of a company that is an individual or sole proprietorship is confidential under common-law privacy. *See* *Morton*, 338 U.S. at 652; ORD 620. Accordingly, the department must withhold most of the information that you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked a small portion of information that you have marked but is not private and must be released.

You also claim that the submitted records contain a social security number that is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> This section encompasses section 58.001 of the Occupations Code, which provides as follows:

The 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 specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

---

<sup>2</sup>Section 552.101 also encompasses information protected by other statutes.

Occ. Code § 58.001.<sup>3</sup> To the extent that any of the submitted social security numbers is that of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by the department, it is confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code.

We also note that under section 552.147 of the Government Code, “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>4</sup> Therefore, to the extent that section 58.001 of the Occupations Code is not applicable to the submitted social security numbers, they must be withheld under section 552.147.<sup>5</sup>

Section 552.130 of the Government Code is applicable to some of the submitted information. This section provides in relevant part:

(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[.]

The department must withhold the marked Texas motor vehicle information under section 552.130.

You also claim that some of the submitted information is subject to section 552.136 of the Government Code, which 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. The department must, therefore, withhold the information that you have marked under section 552.136.

---

<sup>3</sup>There are currently two different sections of the Occupations Code denominated as section 58.001. The section relating to “[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 specific occupation or profession” was renumbered from section 56.001 to section 58.001 in 2003. *See* Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(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.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You inform us that several members of the public have affirmatively consented to the release of their e-mail address contained in the submitted materials. However, there is no indication that a member of the public has affirmatively consented to the release of any of the remaining e-mail addresses. Therefore, the department must withhold most of the e-mail addresses that you have marked, as well as the e-mail addresses we have marked, under section 552.137. Furthermore, some of the e-mail addresses you have marked as excepted from disclosure are business general e-mail

addresses, which are not excepted under section 552.137. We have marked those e-mail addresses for release.

In summary, except for the information that we have marked for release, the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that any of the submitted social security numbers is that of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by the department, it is confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent that section 58.001 of the Occupations Code is not applicable to the submitted social security numbers, they must be withheld under section 552.147 of the Government Code. Texas motor vehicle information must be withheld under section 552.130. The department must also withhold the marked information under sections 552.136 and 552.137 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

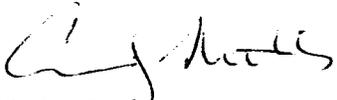
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Tex. 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 Office of the Attorney General 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jpa

Ref: ID# 231868

Enc. Submitted documents

c: Mr. David F. Barton  
The Gardner Law Firm  
Suite 100  
745 East Mulberry Avenue  
San Antonio, Texas 78212-3167  
(w/o enclosures)