



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2006

Ms. Cynthia Villarreal-Reyna
Legal & Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2006-05280

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# 249538.

The Texas Department of Insurance (the "department") received a request for information concerning the United Services Automobile Association ("USAA"), specifically, "2005 USAA's Annual Statement to TDI NAIC # 25941." You state that the department has provided the responsive, non-confidential information to the requestor. However, you state that the department has not released to the requestor a portion of the requested annual statement, USAA's 2005 Supplemental Compensation Exhibit ("SC Exhibit"), because you say it may involve USAA's proprietary or property interest. You inform us that in accordance with section 552.305 of the Act, the department notified USAA of the request and its opportunity to submit to this office reasons why the SC Exhibit should not be withheld or released to the requestor. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered USAA's arguments and reviewed the submitted information. We have also considered Mr. Robert J. Koenig's comments and submissions to this office.

USAA asserts that information concerning the salaries and compensation of USAA directors and executive officers in the SC Exhibit is excepted from disclosure under sections 552.101 and 552.110(b) of the Government Code. We conclude that section 552.101 excepts from required public disclosure information concerning the salaries and compensation of USAA directors and executive officers and therefore do not address USAA's section 552.110(b) claim.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy 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), *cert. denied*, 430 U.S. 931 (1977). This office has determined that "all financial information relating to an individual - including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history - ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." *See* Open Records Decision No. 373 at 4 (1983). Thus, we find that the salary and compensation information here meets the first prong of the common law test for privacy.

The second prong of the *Industrial Foundation* test requires the information in question to be not of legitimate concern to the public. In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the receipt of governmental funds, such as a public employee's participation in an insurance program funded wholly or partially by his or her employer, or debts owed to governmental entities. Open Records Decision Nos. 600 (1992), 480 (1987), 385 (1983). In addition, this office has held that, generally, the public does not have a legitimate interest in a private individual's financial information including the individual's salary and other sources of income. *See* Open Records Decision Nos. 523 at 3-4 (1989), 373 at 3 (1983).

Information concerning the salary and compensation of USAA officers and directors relates solely to a private company's employment relationship with its employees and does not involve public employees, a governmental entity, or the receipt or expenditure of public funds. In this case, no facts have been presented, nor are any apparent, which would establish a legitimate public interest in the salary and compensation information at issue. *See Industrial Foundation*, 540 S.W.2d at 685. This information is therefore private and excepted from required public disclosure under section 552.101. We have marked the private information the department must not release to the requestor. Furthermore, as we have received no arguments against the public disclosure of the remaining information in the

SC Exhibit, we determine that it is not excepted from disclosure and 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).

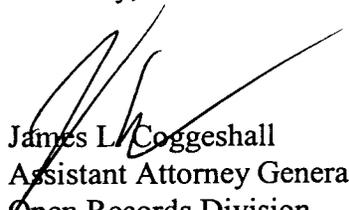
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/KH/sdk

Ref: ID# 249538

Enc: Marked documents

c: Mr. James P. Shannon
2772 Brechin Trail
Elgin, Illinois 30123
(w/o enclosures)

Mr. Robert J. Koenig
c/o Cynthia Villarreal-Reyna
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104
(w/o enclosures)

Mr. Jeffrey S. Boyd
Counsel to USAA
Thompson & Knight, L.L.P.
98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701-4238
(w/o enclosures)