



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2008

Ms. Cynthia Villarreal-Reyna  
Texas Department of Insurance  
Legal Services Division, MC 110-1A  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2008-17597

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# 331102 (TDI Request #83131).

The Texas Department of Insurance (the "department") received a request for a particular workers' compensation health care network application. You state the department will withhold social security numbers from the submitted information pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of Coventry Health Care Workers Compensation, Inc. d/b/a Texas Star Network ("Texas Star"). Accordingly, you inform us, and provide documentation showing, that you notified this company of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body

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<sup>1</sup>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. Based on this representation, we need not address your argument under section 552.101 of the Government Code in conjunction with section 59.001 of the Texas Occupations Code.

to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information, a portion of which includes a representative sample of information.<sup>2</sup>

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Texas Star has not submitted to this office any reasons explaining why the submitted information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of this company, and the department may not withhold any portion of the submitted information on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim the contracts you have marked are confidential under section 1305.102(k), section 1305.152(a), or section 1305.154(a) of the Insurance Code. Section 1305.102(k) of the Insurance Code provides "[a] management contract filed with the department under this section is confidential and is not subject to disclosure as public information under [the Act]." Ins. Code § 1305.102(k). Section 1305.152(a) of the Insurance Code provides "[a] network shall enter into a written contract with each provider or group of providers that participates in the network. A provider contract under this section is confidential and is not subject to disclosure as public information under [the Act]." *Id.* § 1305.152(a). Section 1305.154(a) of the Insurance Code provides "[e]xcept for emergencies and out-of network referrals, a network may provide health care service to employees only through a written contract with an insurance carrier. A network-carrier contract under this section is confidential and is not subject to disclosure as public information under [the Act]." *Id.* § 1305.154(a). You explain the contracts you have marked are the types of contracts made confidential under sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code. Based on your representations and our review, we

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<sup>2</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.

agree the contracts you have marked are confidential under these sections of the Insurance Code and must be withheld under section 552.101 of the Government Code.<sup>3</sup>

Next, you assert that some of the remaining information is confidential under section 162.159 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 162.159 provides that “[t]he information collected, maintained, or stored by the [Texas Medical Board] under this subchapter is privileged and confidential and not subject to . . . disclosure under [the Act,] except as otherwise provided by this subchapter.” Occ. Code § 162.159. This provision only protects information that is in the possession of the Texas Medical Board. In this instance, the submitted information is in the department’s possession, not the Texas Medical Board’s possession. Accordingly, we find that no portion of the submitted information is confidential under section 162.159 of the Occupations Code.

Section 552.101 of the Government Code 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). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides 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. Therefore, the department must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

Finally, you raise section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You inform us that the relevant members of the public have not consented to the release of these e-mail addresses. Therefore, the department must withhold the e-mail addresses you have marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code.

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your argument under section 1305.503 of the Insurance Code.

We note that some of the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the contracts you have marked under section 552.101 of the Government Code in conjunction with chapter 1305 of the Insurance Code. The information you have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The account numbers we have marked must be withheld under section 552.136 of the Government Code and the marked e-mail addresses must be withheld under section 552.137 of the Government Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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 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. 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,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 331102

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. Mark Blakemore  
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(w/o enclosures)