



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2009

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
Legal & Compliance Division, Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-03791

Dear Ms. Waitt:

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# 338060 (TDI No. 86057).

The Texas Department of Insurance (the "department") received a request for information relating to a specified complaint. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from 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, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The types 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. *Id.* at 683. This office has determined that some personal financial information is

highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. See 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 that because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981). Thus, information pertaining to deceased individuals is not confidential under common-law privacy.

The submitted documents contain information pertaining to life insurance. Generally, we find that the decision to obtain life insurance is a private, financial decision that is excepted from disclosure under common-law privacy pursuant to section 552.101. In this instance, however, the insured party is deceased, and thus the insured party’s right to privacy has lapsed. See *Moore*, 589 S.W.2d at 491; Open Records Decision No. 272 at 1 (1981). However, the beneficiaries of the insurance policy have a separate right to privacy. Therefore, information that would reveal a beneficiary’s identity is protected by common-law privacy. Upon review, we find the information you have marked, consisting of the beneficiaries’ identifying information, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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. Therefore, the department must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The marked e-mail address is not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the marked e-mail address pursuant to section 552.137 of the Government Code, unless the department has received consent for its release.

In summary, the department must withhold (1) the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) the insurance policy number you have marked under section 552.136 of the Government Code, and (3) the e-mail address you have marked under section 552.137 of the Government Code, unless the department has received consent for its release. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 338060

Enc. Submitted documents

cc: Requestor
(w/o enclosures)