



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2010

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

OR2010-05705

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# 377536 (TDI #100852).

The Texas Department of Insurance (the "department") received a request for the charter file for Coventry Health Care Workers Compensation, Inc. ("Coventry"). You state you have redacted some information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).<sup>1</sup> You also state you will redact the social security numbers you have marked pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. You also state that release of portions of the requested information may implicate the proprietary interests of Coventry. Accordingly, you

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<sup>1</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers under section 552.136 and e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

<sup>2</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. *See Gov't Code § 552.147(b)*. As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

inform us, and provide documentation showing, that you notified Coventry of the request and of its right to submit arguments to this office as to why its 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>3</sup>

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons under section 552.305 of the Government Code, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Coventry has not submitted to this office reasons explaining why its information should not be released. Therefore, Coventry has provided us with no basis to conclude it has protected proprietary interests in the submitted information. Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest Coventry may have in this information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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. The department claims that 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 services 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

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<sup>3</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.

information under [the Act].” *Id.* § 1305.154(a). You argue that 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 our review, we agree that the contracts you have marked are confidential under sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also 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. *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. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Further, this office has concluded that public disclosure of an individual’s name, home address, and telephone number is not an invasion of privacy. *See* Open Records Decision No. 554 at 3 (1990); *see also* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you have marked is not highly intimate or embarrassing or is of legitimate public concern. Therefore, the department may not withhold the remaining information you have marked under section 552.101 in conjunction with common-law privacy.

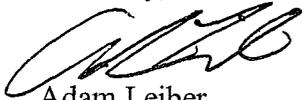
We note that some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection 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 sections 1305.102(k), 1305.152(a), and 1305.154(a) of the Insurance Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

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](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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 377536

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

c: Mr. Mark Blakemore  
Coventry Health Care Workers Compensation, Inc.  
412 Rancho Grande  
Wimberely, Texas 78676  
(w/o enclosures)