



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 29, 2010

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

OR2010-06205

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# 377545 (TDI# 100853).

The Texas Department of Insurance (the "department") received a request for a copy of the charter file for First Health Travelers Health Care Network ("First Health"). You state the department has redacted information from the submitted documents pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.

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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 certain Texas motor vehicle information under section 552.130 of the Government Code, bank account numbers and bank routing numbers under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, 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. 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 for this information.

You also state that release of portions of the requested information may implicate the proprietary interests of First Health. Accordingly, you inform us, and provide documentation showing, that you have notified First Health 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, First Health has not submitted to this office reasons explaining why its information should not be released. Therefore, First Health 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 First Health may have in this information. *Cf.* 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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim that the contracts you have marked are confidential under sections 1305.152(a) or section 1305.154(a) of the Insurance Code.<sup>4</sup> 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

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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.

<sup>4</sup>You raise section 1305.102(k) of the Insurance Code, which applies to management contracts, for Exhibit 6. However, this exhibit does not include a management contract, but instead consists of one page labeled "not applicable." Thus, we understand you to have withdrawn your argument under this exception.

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 argue that the contracts you have marked are the types of contracts made confidential under sections 1305.152(a) and 1305.154(a) of the Insurance Code. Based on your representations and our review, we agree that the contracts you have marked are confidential under sections 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. *See 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 the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also concluded that public disclosure of an individual’s home address and telephone number is not protected by privacy. *See* Open Records Decision No. 455 at 7 (1987) (birth dates, addresses and telephone numbers not protected under privacy). Further, we note that dates of birth are not highly intimate or embarrassing. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629, 638 (Tex. App.— 2008, pet. granted); ORD 455.

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. Therefore, the department may not withhold the remaining information you have marked under section 552.101 in conjunction with common-law privacy.

We note the department has marked what appear to be federal tax identification numbers in Exhibit 11; however, you have not labeled this information as excepted from disclosure under any of the exceptions you raise, nor have you provided arguments explaining why this information is excepted under the Act. *See* Gov’t Code § 552.301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of the documents).<sup>5</sup> Thus, you have not demonstrated that this information is excepted under the Act, and it must be released.

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<sup>5</sup>We note that tax identification numbers are not among the categories of information a governmental body is authorized to withhold without seeking a ruling pursuant to ORD 684.

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(b); *see also id.* § 552.136(a) (definition of “access device number”). The check number you have marked under section 552.136 does not constitute an access device number and may not be withheld under section 552.136.

Section 552.137 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). Gov’t Code § 552.137(a)-(c). The e-mail address we have marked does not appear to be a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the marked e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

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. *See* 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).

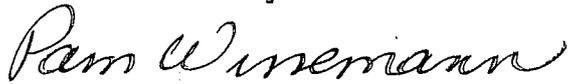
In summary, the department must withhold the contracts you have marked under section 552.101 of the Government Code in conjunction with sections 1305.152(a) and 1305.154(a) of the Insurance Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code. 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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 377545

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Mark Blakemore  
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Wimberley, Texas 78676  
(w/o enclosures)