



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2010

Ms. Sarah Shiplet Waitt  
Senior Associate Commissioner  
Legal and Regulatory Affairs  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2010-18080

Dear Ms. Shiplet 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# 401658 (TDI# 108225).

The Texas Department of Insurance (the "department") received a request for the compensation data for senior officers and directors of the United States Automobile Association ("USAA") in the years 2007, 2008, and 2009. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the request may implicate the proprietary interests of USAA. Accordingly, you state, and provide documentation showing, you notified USAA 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); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from USAA. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor and an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Both the department and USAA argue the submitted information is confidential under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 of the Government Code

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). You state the submitted information is part of an annual statement USAA is required to file with the department. You assert the information you have marked within the statement, which consists of the salary and compensation paid to specific employees of the company, is confidential under common-law privacy. The marked information pertains to USAA officers and directors and relates solely to a private company's employment relationship with its employees. This information does not pertain to public employees, a governmental entity, or the receipt or expenditure of public funds. Therefore, upon review, we find the information you have marked is highly intimate or embarrassing and of no legitimate public concern.

We understand the interested party to assert that subscribing members of USAA have a right of access to the marked information under section 552.023 of the Government Code because the individuals to whom the marked personal financial information pertains act as fiduciaries for the subscribing members. Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Thus, information that relates to a person may not be withheld from that person, or his or her authorized representative, on the basis of that person's right to privacy. *See also id.* § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself). Upon review, we find the marked information does not pertain to the interested party. Further, we find the interested party has failed to demonstrate he or any other subscribing member is an authorized representative of any of the individuals to whom the marked information does pertain. Accordingly, we find subscribing members of USAA do not have a right of access under section 552.023 of the Government Code to the marked information. Thus, the department must withhold the information it has marked under section 552.101 in conjunction with common-law privacy.<sup>1</sup>

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.

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<sup>1</sup>As our ruling is dispositive, we need not address USAA's remaining arguments against disclosure.

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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 401658

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

USAA  
900 Fredericksburg Road  
San Antonio, Texas 78288-4501  
(w/o enclosures)

Mr. Robert J. Koenig  
P.O. Box 1135304  
Hamra  
Beirut, Lebanon  
(w/o enclosures)