



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2011

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

OR2011-01667

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# 407793 (TDI # 109582).

The Texas Department of Insurance (the "department") received a request for information relating to complaints filed by a named individual against another named individual or any insurance agent or insurance company. You state some of the requested information has been released. You take no position on the public availability of the submitted information. You believe, however, the submitted information may implicate the interests of National Western Life Insurance Company ("National Western"). You state National Western was notified of the request for the submitted information and of its right to submit arguments to this office as to why the information should not be released.¹ We have reviewed the information you submitted.

You acknowledge the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b). We note the department also failed to comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e). Under section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

department must withhold any of the submitted information to protect the interests of National Western. Additionally, we note some of the submitted information falls within the scope of sections 552.101, 552.130, 552.136, and 552.137 of the Government Code.² As the applicability of these exceptions can provide compelling reasons for non-disclosure under section 552.302, we will address sections 552.101, 552.130, 552.136, and 552.137.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from National Western. Thus, as National Western has not demonstrated any of the information at issue is proprietary for purposes of the Act, the department may not withhold any of the submitted information on the basis of any interest National Western may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. *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 related to a 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). In this instance, the information at issue is related to annuities and annuitants. We find the decision to purchase an annuity is a private financial decision protected by common-law privacy. We therefore conclude the department must withhold the submitted information that identifies the annuitants, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 560.003 of the Government Code provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). We have marked what appears to be a fingerprint in one of the submitted documents. If the marked information is

²This office will raise sections 552.101, 552.130, 552.136, and 552.137 on behalf of a governmental body, as these sections are mandatory exceptions. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

a fingerprint, the department must withhold it under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). We conclude the department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We conclude the department must withhold the bank account and bank routing numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses of members of the public that do not appear to fall within the scope of section 552.137(c). We conclude the department must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

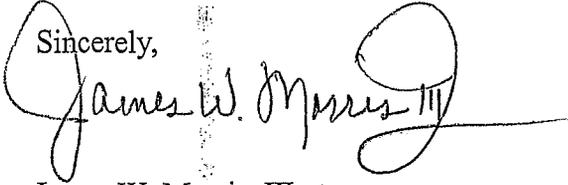
In summary, the department must withhold (1) the marked personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code if the information is a fingerprint; (3) the marked Texas driver's license information under section 552.130 of the Government Code; (4) the marked bank account and bank routing numbers under section 552.136 of the Government Code; and (5) the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its public disclosure.³ The department must release the rest of the submitted information.

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.

³We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 560.003 of the Government Code, a Texas driver's license number under section 552.130 of the Government Code, bank account and bank routing numbers under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code.

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

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 407793

Enc: Submitted documents

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(w/o enclosures)

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