



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

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

OR2011-08872

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# 421346 (TDI# 114532).

The Texas Department of Insurance (the "department") received two requests from the same requestor for complaints filed against two named individuals. You state some of the requested information has been released, including information related to Allianz Life Insurance Company of North America, which informed the department that it did not object to the release of its information. Although the department takes no position on whether the submitted information is excepted from disclosure, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us that you notified Midland National Life Insurance Company ("Midland") and the Law Offices of Jeff Senter ("Senter") of the request and of their right to submit arguments to this office as to why the information should not be released.¹ We have reviewed the information you submitted.

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

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).

correspondence from Midland or Senter. Thus, as Midland and Senter have 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 Midland or Senter 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 552.136 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”). This office has determined an insurance policy number is an access device number for purposes of section 552.136. We conclude the department must withhold the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of the Government Code.²

In summary, 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. The department also must withhold the insurance policy, bank account, and bank routing numbers we have marked under section 552.136 of

²We 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 insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code.

the Government Code. The remaining submitted information must be released to the requestor.³

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

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 421346

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Dawn Dawsey
Allianz Life Insurance Co. of North America
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Minneapolis, Minnesota 55416-1297
(w/o enclosures)

³We note the information to be released contains social security numbers. 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. Gov't Code § 552.147(b).

Mr. Steven Palmitier
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(w/o enclosures)

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