



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2011

Ms. Cynthia Villarreal-Reyna  
Senior Associate Commissioner  
Legal and Regulatory Affairs Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2011-10640

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# 425255 (TDI #115448).

The Texas Department of Insurance (the "department") received a request for information relating to the licensure, discipline, suspension, or other related matters in regards to two named insurance agents. Although you take no position on the public availability of the submitted information, you state its release may implicate the interests of the two named insurance agents. Accordingly, you notified the agents at issue of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from one of the agents at issue. We have considered the submitted arguments and information.

Initially, you acknowledge the department failed to meet the deadline prescribed by section 552.301(b) of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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); *see also* Open Records Decision No. 630 (1994). A

compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the third parties.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common law privacy. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the 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). However, this office has found the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act’s privacy exceptions). The department must withhold the information we have marked under section 552.101 in conjunction with common law privacy.

We note the remaining information contains insurance policy numbers that are subject to section 552.136 of the Government Code. Section 552.136 provides, “[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) (defining “access device”). This office has determined an insurance policy number is an access device for the purposes of section 552.136. Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136.<sup>2</sup>

---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, 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 also withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The department must release the remaining 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.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 425255

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Rebecca Aidala  
Aidala Ins. Group  
324 S. Bishop  
San Angelo, Texas 76901  
(w/o enclosures)