



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2014

Mr. William Clay Harris  
Staff Attorney  
Office of Agency Counsel  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2014-22370

Dear Mr. Harris:

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# 546248 (TDI# 154905).

The Texas Department of Insurance (the "department") received a request for all documentation associated with a specified complaint. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, we note

common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest; thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the department will redact the insurance policy numbers you have marked under section 552.136 of the Government Code.<sup>1</sup> We note the submitted information contains additional information subject to section 552.136. Section 552.136 of the Government Code provides, “Notwithstanding 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the insurance policy numbers you have marked, in addition to the ones we have marked, under section 552.136 of the Government Code.

You state the department will redact the e-mail addresses you have marked under section 552.137 of the Government Code pursuant to Open Records Decision No. 684.<sup>2</sup> Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). We note the information you have marked includes the requestor’s personal e-mail address, to

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<sup>1</sup>On September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 (2009) on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specified categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

which he has a right of access under section 552.137(b) of the Government Code. *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). Accordingly, this information may not be withheld from him under section 552.137. Furthermore, we note the information you have marked under section 552.137 includes an e-mail address provided to a governmental body on a letterhead that is specifically excluded by section 552.137(c). *See id.* § 552.137(c). In addition, we find the submitted information contains additional e-mail addresses subject to section 552.137. The e-mail addresses at issue are not within the scope of section 552.137(c). Accordingly, except for the e-mail addresses we have marked for release, the department must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

You note some of the materials at issue may 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109(1975). 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.

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 withhold the insurance policy numbers you have marked, in addition to the ones we have marked, under section 552.136 of the Government Code. Except for the e-mail addresses we have marked for release, the department must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The department must release the remaining information to the requestor, but may only release any copyrighted information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Br Berger", written over the printed name.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/ac

Ref: ID# 546248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)