



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-358

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30132.

The Texas Department of Insurance (the "department") received a request for any records concerning Diversified Consultants, Inc.; National Risk Specialists, Inc.; Stop Loss International and Medical Risk Intermediaries; Jerry D. Lancaster & Associates, Inc.; Jerry D. Lancaster, Aaron Lancaster, Daron Lancaster, Derek Lancaster, and Willa Goodman. You say some of the requested information will be released to the requestor. You raise several exceptions in the Open Records Act to the required public release of portions of the requested information. Counsel for several third parties whose privacy and property interests are implicated by the release of portions of the requested information has also raised several exceptions to the required public release of the requested information.¹

¹Counsel informs us that she represents Diversified Consultants, Inc.; Jerry D. Lancaster & Associates; Jerry D. Lancaster, Aaron Lancaster, Daron Lancaster and Derek Lancaster; and Texas Administrators, Inc. Since the property and privacy rights of third parties are implicated by the release of the requested information here, this office notified those parties of this request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

Counsel for the third parties asserts that certain third party administrator agreements are excepted from required disclosure based on section 552.107(2) of the Government Code. Section 552.107(2) excepts from disclosure information if "a court by order has prohibited disclosure of the information."

You enclosed a copy of an agreed protective order in the case styled *In the Matter of Texas Administrators, Inc.*, Docket No. 454-94-045 filed with the State Office of Administrative Hearings, in which the administrative law judge ordered that all documents produced during discovery that concern Texas Administrator's clients not be disclosed. See 28 T.A.C. § 1.86(b) (authorizing hearings officer to issue protective orders). We will assume this is a valid order of the administrative law judge. Counsel for third parties informs us that the agreements at issue were produced in response to interrogatories from the department during the discovery process.

We must consider whether a "court" order for purposes of section 552.107(2) of the Government Code includes an order of an administrative judge in a contested case under the Insurance Code conducted by the State Office of Administrative Hearings. We conclude that it does.

An administrative forum operating pursuant to the Administrative Procedure Act functions as a court. See Open Records Decision No. 588 (1990) at 3 (citing *State v. Thomas*, 766 S.W.2d 217 (Tex. 1989)). Moreover, an interim order issued by an administrative law judge is enforceable in a court of law. See 28 T.A.C. § 1.90(f)(3) (stating that order is binding upon parties and judge, subject to right of aggrieved person to seek judicial relief); see also *id.* § 1.90(b)(4) (defining interim order). Consequently, the department may withhold the third party administrator agreements from required public disclosure based on section 552.107(2) of the Government Code.²

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception incorporates the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *id.* You are concerned about the release of medical information.

²In light of this conclusion in regard to section 552.107(2), we need not address the applicability of sections 552.101, 552.104, or 552.110 of the Government Code..

While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81 (1983); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We agree that the information you enclosed contains some private medical information. The information also contains private financial information. *See* Open Records Decision No. 600 (1992) at 7, 8. Consequently, the department must redact all information that identifies the individual who is the subject of these records.

Finally, the department raises section 552.108 of the Government Code in regard to certain records that you say the department released to a law enforcement agency for investigation of possible criminal violations as well as violations of the Texas Insurance Code. Section 552.108 may apply to information gathered by an administrative agency when an investigatory file is open, and there exists a reasonable probability of criminal prosecution. *See* Attorney General Opinion MW-575 (1982). You inform us that this case is still pending. We, therefore, conclude that pursuant to section 552.108 of the Government Code the department may withhold the investigative materials submitted to a law enforcement agency.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 30132

Enclosures: Submitted documents

cc: Mr. Paul Lamb
Schrader, Lamb & Associates, Inc.
1700 One American Center
600 Congress Avenue
Austin, Texas 78701
(w/o enclosures)

Ms. Kerri Fields
Bordelon, Fields, L.L.P.
Attorneys at Law
6034 West Courtyard Drive, Suite 305-102
Austin, Texas 78730
(w/o enclosures)