



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1995

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

OR95-476

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# 31085.

The Texas Department of Insurance (the "department") received a request for copies of files of complaints against United Olympic Life Insurance Company (the "company") during 1992, 1993, and 1994. You say some of the information will be made available to the requestor, but portions of the requested information are excepted from required public disclosure pursuant to sections 552.101, 552.111, and 552.112 of the Government Code. You enclosed representative samples of the information the department seeks to withhold from disclosure.

Section 552.101 excepts from required public disclosure information that is made confidential by law, including information made confidential by statute. You have marked portions of the requested information as excepted from disclosure by article 1.15B of the Insurance Code. Article 1.15B provides as follows:

Any information relating to the financial solvency of any organization regulated by the department under this code or another insurance law of this state obtained by the department's early warning system is confidential and is not subject to disclosure under the open records law . . .

You seek to protect from disclosure under this provision two documents. One is a memorandum from Carole Thornton, Chair of the Early Warning Working Group, to Mr. Craig Gardner, Associate Commissioner Financial, concerning a recommendation pertaining to the company. The other appears to be a memorandum with attachments concerning the company's advertising, from Mr. Silas J. Alexander, Insurance Technician, Consumer Services Program, Advertising Division, to the Early Warning Committee.

We do not believe the protection of article 1.15B extends to all of the information in these memoranda. Article 1.15B, by its terms, only protects "information relating to the financial solvency" of the company that the early warning system "obtained." Thus, the statute only applies to the portion of the memorandum from Ms. Carole Thornton that concerns the financial solvency of the company, and not to the other information in the memorandum. We have marked the document accordingly. We do not believe the memorandum from the advertising division to the Early Warning Committee contains any information about the company's financial solvency. Thus, article 1.15B does not apply to that memorandum or to its attachments.

Section 552.101 also applies to information that is protected from required public disclosure based on 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.*

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 believe that the medical records you enclosed contain private information. Accordingly, the department must withhold from required public disclosure all information on these records that identifies the patient. We have marked the records accordingly.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Section 552.111 also applies to preliminary drafts of documents, since the draft necessarily represents the advice, opinion, and recommendation of the draftee. *See* Open Records Decision No. 559 (1990).

You raise section 552.111 in regard to a draft document and an interoffice memorandum. We agree that the draft document is excepted from required public disclosure under section 552.111. *See id.* In addition, we have marked the portions of the memorandum that the department may withhold based on section 552.111.

Section 552.112(a) excepts from required public disclosure

information contained in or related to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

Insurance companies are included within the term "financial institutions" for purposes of section 552.112(a). Open Records Decision No. 158 (1977) at 5-6. Portions of the requested information contain information about the financial condition of the company. The department may withhold this information from required public disclosure based on section 552.112 of the Government Code.<sup>1</sup>

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.

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<sup>1</sup>Having concluded that the department may withhold the information based on section 552.112, we need not address the application of article 1.11(b) of the Insurance Code to this information.

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# 31085

Enclosures: Marked documents

cc: Mr. Mitchell J. Buchman  
George, Buchman & Leigh  
Attorneys at Law  
3050 Two Allen Center  
1200 Smith  
Houston, Texas 77002-4308  
(w/o enclosures)