



December 5, 2001

Ms. Ann Bright  
Section Chief  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2001-5655

Dear Ms. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155727.

The Texas Department of Insurance (the "department") received a request for access to and certified copies of all information pertaining to a specified claim. You state that you have released some responsive information. You claim, however, that some portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.<sup>1</sup> Information is protected by the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy. See Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common law right to privacy.

information), 523 (1989) (information related to individual's mortgage payments, assets, bills, and credit history excepted under the common law right to privacy). Based on our review of your arguments and the submitted information, we conclude that the department must withhold all of the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy, except for the information that we have marked to be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

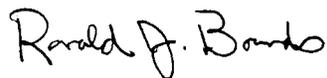
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 155727

Enc: Marked documents

c: Ms. Sarah B. Kimbrough  
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(w/o enclosures)