



October 4, 2002

Ms. Cynthia Villarreal-Reyna
Agency Counsel
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2002-5605

Dear Ms. Villarreal-Reyna:

Ms. Sara Shippet-Waitt, Senior Associate Commissioner, Legal and Compliance Division, has asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170233.

The Texas Department of Insurance (the "department") received a request for information identifying companies in Texas who have bought Corporate Owned Life Insurance Policies. The department states that it will release some responsive information to the requestor. The department further states that some of the requested information may be confidential under section 552.110 of the Government Code, but makes no arguments and takes no position as to whether the information is so excepted from disclosure. The department claims that some of the requested information is excepted from disclosure under section 552.137 of the Government Code. We have considered the arguments and information submitted.

The department informs this office, and provides documentation showing, that it has notified Benfield Blanch, Inc. ("Benfield"), the successor in interest to International Accident Facilities, Inc., and interested third party whose proprietary interests may be implicated by the request, of the request for information. *See* Gov't Code 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 Public Information Act (the "Act") in certain circumstances). An interested third party is allowed ten business days after the date

of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Benfield has not submitted to this office its reasons explaining why its information should not be released. Therefore, Benfield has provided us no basis on which to conclude that the submitted information is excepted from disclosure under section 552.110. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that the department informs us that some of the information at issue is the same information that was at issue in a previous request for a ruling from the department to this office. As the current request seeks the identical information previously requested and ruled upon by this office in Open Records Letter No. 1998-2678 (1998), and there is no indication that the law, facts, or circumstances on which the ruling was based have changed, we agree the department must rely on that ruling as a previous determination and withhold portions of the requested information under section 552.101 in accordance with Open Records Letter No. 1998-2678 (1998). *See* Open Records Decision No. 673 (2001) (so long as law, facts, the circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

Further, the submitted documents contain additional insurance policy information that must be withheld. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. For information to be protected from public disclosure pursuant to this right, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has held that personal financial information not related to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990). The department must therefore withhold the remaining names and policy numbers of insured individuals in the submitted documents pursuant to section 552.101 in conjunction with the common-law right of privacy.

Finally, section 552.137 provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act].” *See* Gov’t Code § 552.137(a). The department states that the individual to whom the e-mail address belongs has not consented to its release. Therefore, we agree that the department must withhold it under section 552.137 of the Government Code. *See* Gov’t Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

In summary, the department must withhold portions of the requested information in accordance with Open Records Letter No. 1998-2678. The department must also withhold the remaining names and policy numbers of insured individuals under section 552.101 and common-law privacy. The marked e-mail address must be withheld under section 552.137. The remaining requested information must 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 170233

Enc. Submitted documents

c: Mr. David George
Edwards & George, L.L.P.
5847 San Felipe, Suite 2375
Houston, Texas 77057
(w/o enclosures)

Mr. Dan Eldridge
Associate General Counsel
Benfield Blanch, Inc.
3600 West 80th
Minneapolis, Minnesota 55431
(w/o enclosures)