



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 4, 2003

Ms. Cynthia Villarreal-Reyna
Section Chief, Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2003-8684

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192292.

The Texas Department of Insurance (the "department") received a request for complaints related to A+ Insurance and three named individuals from January 1, 1998 through August, 2003. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the department's statement that Open Records Letter No. 2001-4777 (2001) is applicable to some of the submitted information. In that decision, we authorized the department to withhold, under section 552.101 of the Government Code in conjunction with common-law privacy, information that identifies an enrollee in a health plan, including the enrollee's name, address, telephone number, birth date, social security number, and claim number, without the necessity of again requesting a decision under section 552.301 of the Government Code, as long as the elements of law, fact, and circumstances on which the prior ruling is based do not change.

The department informs us that it has marked information in the submitted documents that identifies an enrollee in a health plan and is therefore excepted from disclosure under Open Records Letter No. 2001-4777 (2001). The department does not inform us of any change in the law, facts, or circumstances on which the prior ruling is based. We note, however, that

a portion of the information that you have marked as related to a health plan is also marked as property or casualty insurance for boats. Whether the information at issue identifies an enrollee in a health plan or relates to property or casualty insurance presents a fact issue. This office cannot resolve factual disputes in the opinion process. See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, the department must withhold the marked portions of the submitted information that identify an enrollee in a health plan in accordance with Open Records Letter No. 2001-4777 (2001). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). To the extent that any of this information does not identify an enrollee in a health plan, the department may not withhold it in accordance with Open Records Letter No. 2001-4777 (2001).

Next, we address the department's claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects private facts about individuals. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You have marked information in the submitted documents which relates to private parties and complaints involving property and casualty insurance that you claim is protected by common-law privacy, including information relating to policy numbers, claim numbers, and claim or repair amounts. Having considered your arguments and reviewed the information that you claim is private, we agree that most of the information that you have marked must be withheld under section 552.101 in conjunction with common-law privacy. However, as we have ruled frequently in the past, social security numbers are not protected by privacy. See Open Record Decision Nos. 600 (1992), 455 (1987), 254 (1980), 169 (1977).

The social security numbers may, nevertheless, be excepted from required public disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). We note that a social security number may only be withheld under this federal provision if the number was obtained or is maintained by the governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You have marked motor vehicle information which you claim is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore we agree that, pursuant to section 552.130, the department must withhold from disclosure the Texas drivers' license numbers and vehicle identification numbers that you have marked. We note, however, that the serial number of a boat and an account number, both of which you have also marked, are not excepted under section 552.130.

The department has also marked bank account numbers which you claim are excepted from disclosure under section 552.136. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, 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. Thus, we agree that the department must withhold the marked bank account numbers under section 552.136.

Finally, you raise section 552.137 of the Government Code, which provides as follows:

(a) Except as otherwise provided by this section, an 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web site address. E-mail addresses that are encompassed by subsection 552.137(c) are also not excepted from disclosure under section 552.137. Based on our review of the submitted information, we find that the e-mail addresses contained within this information are excepted from disclosure under section

552.137(a). You state that the department has not received affirmative consent for the release of e-mail addresses that are contained within the submitted information. Accordingly, we conclude that the department must withhold the e-mail addresses that it has marked pursuant to section 552.137(a) of the Government Code.

In summary, the department must withhold the marked information that is protected by common-law privacy under section 552.101. The department also must withhold the marked motor vehicle information under section 552.130, account number information under section 552.136, and e-mail addresses under section 552.137. Social security numbers may be confidential under federal law. The remaining submitted information must be released to the requestor.

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 Dep't of Pub. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 192292

Enc. Submitted documents

c: Mr. Larry Lamb
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(w/o enclosures)