



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2004

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

OR2004-5966

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# 205535.

The Texas Department of Insurance (the "department") received a request for records pertaining to a named individual or a named entity. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.111, 552.130, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Public Information Act (the "Act") is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this case, the department was required to submit the specific information requested to this office no later than May 21, 2004. Although the department submitted most of the specific requested information to this office

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<sup>1</sup>We note that the department has withdrawn its claims under sections 552.103 and 552.107 of the Government Code.

on May 21, 2004, we note that the department also submitted additional responsive information, which consists of a cancellation for cause file, on June 1, 2004. Therefore, we find that the department failed to comply with the procedural requirements of section 552.301(e) with regard to this additional information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630 (1994)*. Because your claim under section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted cancellation for cause file.

You assert that the submitted cancellation for cause file is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 21.07 of the Insurance Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Section 6B of article 21.07 of the Insurance Code provides:

(a) Each insurance carrier or agent shall, on termination of the appointment of an agent for cause, immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement the department shall record the termination of the appointment of that agent to represent the insurance carrier in this state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in any court action or proceeding except under a subpoena issued by a court of record.

Ins. Code art. 21.07, § 6B(a), (b). Based on your representations and our review of the information at issue, we understand that the submitted cancellation for cause file consists of information required to be disclosed to the department under section 6B of article 21.07. Therefore, this information is confidential under section 6B(b) of article 21.07 and must be withheld from disclosure under section 552.101.

Next, we note that the remaining submitted information contains insurance policy numbers and bank account numbers that are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. The marked insurance policy and bank account numbers are excepted from disclosure pursuant to section 552.136.

You assert that portions of the remaining submitted information are protected under the doctrine of common-law privacy, which is also encompassed by section 552.101. 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 Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 claim numbers and claim or repair

amounts. Having considered your arguments and reviewed the submitted information, we agree that some of the marked information must be withheld under section 552.101 in conjunction with common-law privacy. We have also marked additional information that must be withheld on this basis. However, we find that the remaining information that you have marked is not the type of background financial information about a private individual that ordinarily is protected by common-law privacy. *See generally* Open Records Decision Nos. 523 (1989), 373 (1983). We also note that social security numbers are not protected under common-law privacy. *See* Open Records Decision No. 622 at 2 (1994). Therefore, the department may not withhold this information, which we have marked, under section 552.101.

We note that social security numbers may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the marked social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You assert that some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Tex. Dep’t of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You state that the information you seek to withhold under section 552.111 relates to communications among department staff concerning the department’s “handling of

regulation matters, recommended actions, and opinions and analyses of regulatory matters.” Upon review, we agree that the information at issue consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the department. Therefore, the department may withhold this information under section 552.111.

You also assert that portions of the submitted documents consist of Texas motor vehicle record information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. The department must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130.

You also claim that the submitted information includes e-mail addresses that are protected under section 552.137 of the Government Code, which provides:

(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.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. We determine that the e-mail addresses you have marked, as well as additional e-mail addresses we have marked, are within the scope of section 552.137(a). Unless the department has received affirmative consent to disclose the e-mail addresses, the department must withhold the marked e-mail addresses under section 552.137.

In summary, the department must withhold the submitted cancellation for cause file under section 552.101 in conjunction with section 6B of article 21.07 of the Insurance Code. The department must withhold the marked insurance policy and bank account numbers under section 552.136. The department must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy. The marked social security numbers may be confidential under federal law. The department may withhold the information you have marked under section 552.111. The department must withhold the marked Texas motor vehicle record information under section 552.130. The department must withhold the marked e-mail addresses under section 552.137 unless affirmative consent for release has been received. The remaining submitted 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 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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 205535

Enc. Submitted documents

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(w/o enclosures)