



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2005

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

OR2005-02996

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# 221597.

The Texas Department of Insurance (the "department") received a request for twenty categories of information pertaining to Dallas Fire Insurance Company. The department claims that the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.136 and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we note that in Open Records Decision No. 640 (1996), this office concluded that section 9 of article 1.15 of the Insurance Code makes confidential information the department represents to be work papers related to examination reports concerning a carrier that was not in liquidation or receivership. In Open Records Letter No. 99-1264 (1999), this office concluded that the department may rely on Open Records Decision No. 640 as a previous determination as to the protection afforded to information covered by section 9 of article 1.15, and the department need not ask this office for an open records ruling. The

¹ We assume 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). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

department has informed this office that some of the requested information relates to the examination of an entity regulated by the department. Thus, the department may continue to rely on the previous determination in withholding such information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. Subsection (c) of article 5.58 of the Insurance Code requires that claim reports containing specified information be submitted to the department “on each workers’ compensation claim.” Subsection (d) makes confidential “a social security number or any other information collected under Subsection (c) of this article which would disclose the identity of the claimant.” Accordingly, you must withhold as confidential the identifying information you have marked under section 552.101 in conjunction with article 5.58(d) of the Insurance Code.

Section 552.101 also encompasses common law privacy. Information is protected by the common law right to privacy when it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. We note, however, that common law privacy protects the privacy interests of individuals, but not of corporations or other types of business organizations. *See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Therefore, no portion of the remaining submitted information you have marked may be withheld under section 552.101 in conjunction with common law privacy.

Section 552.111 of the Government Code 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 *Texas Department 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 policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions 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. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. You assert that three of the submitted documents are communications between department employees and consist of “opinions and analyses of regulatory matters.” Based on your representations and our review of the submitted information, we conclude that the department may withhold the information it has marked under section 552.111.

We note that the remaining submitted information contains Texas motor vehicle information subject to section 552.130 of the Government Code.² In relevant part, this section provides:

(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(a). Therefore, the department must withhold the Texas driver’s license number we have marked pursuant to section 552.130.

You also claim that some of the remaining submitted information is subject to section 552.136 of the Government Code, which 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. An access device number is one that 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.” *Id.* The department must withhold the policy and bank account numbers we have marked under section 552.136.

Lastly, you claim that some of the e-mail addresses in the remaining submitted documents must be withheld under section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by

² The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

subsection (c). *See* Gov't Code § 552.137(a)-(c). Two of the e-mail addresses you have marked as excepted from disclosure are specifically excluded by section 552.137(c). We have marked these e-mail addresses for release. *See* Gov't Code § 552.137(c) (e-mail address on letterhead or document available to public generally not excepted under section 552.137). The remaining e-mail addresses you have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, these e-mail addresses must be withheld.

In summary, the department must continue to rely on Open Records Letter No. 99-1264 as a previous determination regarding the protection afforded to information covered by section 9 of article 1.15 of the Insurance Code. The department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with article 5.58(d) of the Insurance Code. The department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The department must also withhold the majority of the e-mail addresses it has marked under section 552.137 of the Government Code. You may withhold the information you have marked under section 552.111 of the Government Code. All remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 221597

Enc. Submitted documents

c: Ms. Alicia G. Curran
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(w/o enclosures)