



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2005

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714

OR2005-09093

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 233808.

The Texas Department of Insurance (the "department") received a request for all "complaints or investigations" on two named insurance agents. You inform us that, in accordance with a previous determination issued to the department, you will withhold any information or material acquired by the department that relates to a fraud investigation under section 701.151 of the Texas Insurance Code. See Open Records Letter No. 2005-05223 (2005) (determining information acquired by the department that is relevant to an inquiry by the insurance fraud unit that the commissioner deems confidential is excepted from disclosure and need not be submitted to this office for review under section 552.301 of the Government Code). You also state that you will release some of the requested information, but claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

(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). Accordingly, the department must withhold the personal financial information you have marked under section 552.101 in conjunction with common law privacy.

The submitted information also contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Gov’t Code §552.130(a). Consequently, pursuant to section 552.130, you must withhold the marked Texas motor vehicle record information.

The department also claims that some of the 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. The department must, therefore, withhold the policy and account numbers you have marked under section 552.136 of the Government Code.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147.<sup>2</sup>

In summary, the department must withhold the information marked under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. The 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

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<sup>1</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'JAP', with a large, stylized flourish extending from the end of the signature.

James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 233808

Enc. Submitted documents

c: Ms. Judith Easterling  
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Texarkana, Arkansas 71854  
(w/o enclosures)