



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 27, 2009

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

OR2009-02609

Dear Ms. Villarreal-Reyna:

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# 335954 (TDI# 85502).

The Texas Department of Insurance (the "department") received a request for a specified complaint. You claim portions of the submitted information are exempted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961))*. The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988)*. The privilege exempts the informer's

statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state the submitted information consists of a complaint made to the department that discusses potential conduct that would violate the law. You state this information was provided to an individual with authority to act and investigate the allegations expressed in the complaint. We note the submitted complaint alleges insurance fraud, which carries criminal penalties.<sup>1</sup> Based on your representations and our review of the information at issue, we conclude the department may withhold the information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found certain personal financial decisions not relating to a financial transaction between an individual and a governmental body are generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). We note 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). Upon review, we find some of the information you have marked is intimate and embarrassing and not of legitimate public interest. However, the remaining information you have marked does not pertain to an individual and may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

You assert the personal e-mail addresses you have marked are excepted under section 552.137 of the Government Code. Section 552.137 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 subsection (c). Gov't Code § 552.137(a)-(c). The personal e-mail addresses you have marked do not appear to be of a type specifically excluded by section 552.137(c). You inform us the members of the public

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<sup>1</sup>We note that the penalties for insurance fraud range from a class C misdemeanor to a felony of the first degree. *See* Penal Code 35.02(2)(c).

have not consented to the release of these personal e-mail addresses. We note, however, you have marked the requestor's e-mail address. The requestor has a right of access to his own e-mail address. *Id.* § 552.137(b) (owner of e-mail address may consent to release of e-mail address). Therefore, except for the requestor's e-mail address, the department must withhold the personal e-mail address you have marked under section 552.137 of the Government Code.

In summary, the department may withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with the common-law informer's privilege. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Except for the requestor's e-mail address, the department must withhold the personal e-mail address you have marked under section 552.137. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 335954

Enc. Submitted documents

c: Requestor  
(w/o enclosures)