



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2009

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

OR2009-07255

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# 344372 (TDI # 89130).

The Texas Department of Insurance (the "department") received a request for information pertaining to two specified department files. You state some information has been released to the requestor. Although you take no position with regards to the submitted information, you state that release of this file could implicate the proprietary interests of Texas Windstrom Insurance Association ("TWIA"). Accordingly, you state, and provide documentation showing, that you notified TWIA of the department's receipt of the request for information and of its right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and arguments.

TWIA claims that portions of the submitted information are excepted 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990); *see also* Open Records Decision No. 600 (personal financial information includes choice of particular insurance carrier). Portions of the submitted information constitute personal financial information. We find that there is not a legitimate public interest in the release of this information. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

However, TWIA also claims section 552.101 in conjunction with common-law privacy for the addresses and telephone numbers of individuals listed in the submitted information. This office has concluded that public disclosure of an individual's name, home address, and telephone number is not an invasion of privacy. *See* Open Records Decision Nos. 554 at 3 (1990); *see also* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers are generally not protected under the Act's privacy exceptions). We therefore conclude that the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, TWIA contends that some of its information is confidential under section 552.101 in conjunction with section 38.001(d) of the Insurance Code. Section 38.001 provides in part:

(b) The department may address a reasonable inquiry to an insurance company, including a Lloyd's plan or reciprocal or interinsurance exchange, or an agent or other holder of an authorization relating to:

(1) the person's business condition; or

(2) any matter connected with the person's transactions that the department considers necessary for the public good or for the proper discharge of the department's duties.

...

(d) A response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Ins. Code § 38.001(b), (d). We note that section 38.001(d) does not itself make any information privileged or confidential. Rather, section 38.001(d) provides that information furnished to the department that is otherwise privileged or confidential remains privileged

or confidential until introduced into evidence at an administrative hearing or in a court. In order for section 552.101 to apply, a statute must contain language expressly making certain information confidential. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the department may not withhold any portion of TWIA's information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 38.001 of the Insurance Code.

TWIA also contends that a portion of its information is confidential under section 36.159 of the Insurance Code. Section 36.159 provides, in relevant part:

(c) Specific information relating to a particular policy or claim is privileged and confidential *while in the possession of an insurance company, organization, association, or other entity holding a certificate of authority from the department* and may not be disclosed by the entity to another person, except as specifically provided by law.

Ins. Code § 36.159(c) (emphasis added). We note that section 36.159(c) pertains to the confidentiality of certain information while in the possession of an insurance company. In this instance, the information at issue is in the possession of the department. Accordingly, we find that TWIA has failed to demonstrate that the information at issue is confidential under section 36.159(c) of the Insurance Code, and the department may not withhold any of portion of TWIA's information under section 552.101 on that basis.

TWIA contends the insurance policy numbers in the submitted information are confidential under section 552.136 of the Government Code. Section 552.136 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 withhold the insurance policy number we have marked under section 552.136. However, the requestor is listed as the insured for one of the policy numbers in the submitted information. Section 552.136 protects privacy interests; thus, the requestor has a right of access to her section 552.136 information under section 552.023 of the Government Code. *See Id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Finally, we note that the remaining information contains a personal e-mail address that is subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department also must withhold the insurance policy number we have marked under section 552.136 and the e-mail address we have marked under section 552.137. The remaining information must be released to the requestor.²

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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

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²Should the department receive another request for these same records from a person who would not have a right of access to the records, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

Ref: ID# 344372

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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