



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2009

Ms. Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
P.O. Box 13509  
Austin, Texas 78711-3509

OR2009-08145

Dear Ms. Durso:

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# 346041 (TRC #2647).

The Texas Residential Construction Commission (the "commission") received a request for information relating to a named individual and specified company. You inform us the commission contacted the requestor who clarified her request to only include the insurance company that covered the named individual's medical benefits. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state you have released some information to the requestor with redactions agreed upon by the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

As noted above, the requestor clarified her request to only include the name of the insurance company that covered the named individual's medical benefits. Accordingly, only the name of the insurance company in the submitted information is responsive to the request. Thus, the remaining information in the submitted information is not responsive to this request. This ruling does not address the public availability of nonresponsive information, and the commission is not required to release nonresponsive information in response to this request. Accordingly, we will only address your arguments with regard to the responsive information.

Next, we note, and you acknowledge, the commission has not complied with the requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold

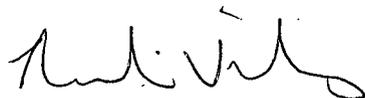
the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential by law. Open Records Decision No. 150 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider the applicability of section 552.101 to the responsive 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 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. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include choice of particular insurance carrier). Upon review of the responsive information, we find it is highly intimate and not of legitimate public interest. Accordingly, the commission must withhold the responsive information under section 552.101 in conjunction with common-law privacy.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/rl

Ref: ID# 346041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)