



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2009

Ms. Sarah Shiplet Waitt
Senior Associate Commissioner
Legal and Regulatory Affairs
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-09168

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# 347826 (TDI OR # 90281).

The Texas Department of Insurance (the "department") received a request for information pertaining to a specified department complaint file. You state the department has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. In addition, you state that release of this file may implicate the proprietary interests of Texas Windstorm 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 received comments from TWIA. We have reviewed the submitted information and arguments.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. TWIA contends that 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 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 also argues that its information is subject to common-law and constitutional privacy. Section 552.101 also encompasses constitutional and common-law privacy. Constitutional

privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education that the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in disclosure of the information. See ORD 455 at 7. Constitutional privacy is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Although TWIA claims that its information, in its entirety, is protected under its own privacy interests, we note that these doctrines protect the privacy interests of individuals, and not those of corporate entities and other business organizations, such as TWIA. 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, we find that no portion of the TWIA’s information may be withheld under section 552.101 based on the common-law privacy or constitutional privacy interests of TWIA.

TWIA also contends that the name and address of an individual, pictures of the interior of the building that is the subject of its information, as well as pictures and descriptions of damage to that building, are subject to common-law privacy and constitutional privacy. We note 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 ORD 455 at 7 (home addresses and telephone numbers are generally not protected under the Act’s privacy exceptions). Upon review, we conclude that TWIA has failed to demonstrate that any of its information is highly intimate or embarrassing and of no legitimate public interest. Thus, none of this information may be withheld under section 552.101 on the basis of common-law privacy. In addition, TWIA has not demonstrated how any of the information at issue falls within the zones of privacy or

implicates an individual's privacy interests for purposes of constitutional privacy. Thus, none of the information at issue may be withheld under section 552.101 in conjunction with constitutional privacy.

TWIA also asserts that portions of its information are subject to section 552.136 of the Government Code, which provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding 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.

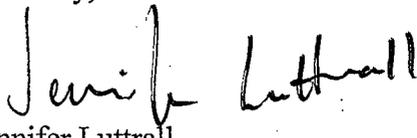
Gov't Code § 552.136. This office has determined that insurance policy numbers constitute access device numbers for purposes of section 552.136. However, the submitted insurance policy number pertains to the requestor. Section 552.136 protects privacy interests; thus, the requestor has a right of access to her section 552.136 information under section 552.023 of the Government Code. *Id.* § 552.023. TWIA asserts that the submitted insured individual's name, the address of the insured property, and the claim number are subject to section 552.136. Upon review, we find that TWIA has failed to demonstrate how the insured individual's name, address of the insured property, or the claim number consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). We therefore conclude the department may not withhold any of the submitted information under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure. As no further exceptions to disclosure have been raised, 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 347826

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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