



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2010

Ms. Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR2010-04623

Dear Ms. Bijansky:

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# 374436.

The Texas Real Estate Commission (the "commission") received a request for several categories of information pertaining to American Home Shield of Texas, Inc. ("American Home Shield"). You state you are releasing most of the responsive information to the requestor. You claim some of the remaining information is excepted from disclosure under section 552.101 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests American Home Shield. Accordingly, you state, and provide documentation showing, the commission notified American Home Shield of the request and of its right to submit arguments stating why its information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have considered the exception you claim and reviewed the submitted information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you inform us the commission asked the requestor to clarify portions of the requested categories of information. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). In this instance, we assume the commission has made a good faith effort to relate the request to information in the commission's possession. You state the commission has not received a response to its request for clarification. Accordingly, we find the commission has no obligation at this time to release any information that may be responsive to the parts of the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the commission must seek a ruling from this office before withholding any responsive information from the requestor.

Next, you inform us a portion of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-00109 (2010). In that ruling, we found the commission must withhold the information you indicated in the submitted 2007 annual report under section 552.101 of the Government Code in conjunction with section 1303.202(c) of the Occupations Code. In addition, we ruled to the extent the bank account numbers, bank routing numbers, and insurance policy numbers marked were not contained in the information being withheld from the annual report pursuant to section 1303.202(c) of the Occupations Code, the commission must withhold them under section 552.136 of the Government Code. Likewise, to the extent the personal e-mail addresses we marked were not contained in the information being withheld from the annual report pursuant to section 1303.202(c) of the Occupations Code, the commission must withhold them under section 552.137 of the Government Code, unless it receives consent for their release. The remaining information was ordered released in accordance with copyright law. With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the commission must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2010-00109.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code

²As our ruling for this information is dispositive, we need not address your argument against its disclosure.

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from American Home Shield explaining why the submitted information should not be released. Therefore, we have no basis to conclude the company has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold the remaining information based upon the proprietary interests of American Home Shield.

We note that the remaining information contains American Home Shield's tax return information and information subject to section 552.101 in conjunction with common-law privacy, and sections 552.136 and 552.137 of the Government Code.³ 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. Section 552.101 encompasses information made confidential by other statutes, including section 6103(a) of title 26 of the United States Code. This office has held that title 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of . . . income." *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the commission must withhold the corporate tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). Upon review, we find the

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

submitted salary information of American Home Shield's employees is highly intimate and not of legitimate public interest. Thus, the commission must withhold the employee salary information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.136 provides "[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(b); *see also* § 552.136(a) (definition of "access device number" includes account numbers). We have marked bank account and routing numbers that the commission must withhold pursuant to 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). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not the types specifically excluded by section 552.137(c). Therefore, the commission must withhold them pursuant to section 552.137 of the Government Code, unless it receives affirmative consent for their release.

In summary, the commission must continue to rely on Open Records Letter No. 2010-00109 as a previous determination and withhold or release information pertaining to the 2007 annual report in accordance with that ruling. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, common-law privacy, and sections 552.136 and 552.137 of the Government Code.⁴ The remaining information must be released.

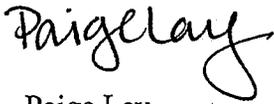
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers and bank routing numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 374436

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. David J. Crawford
American Home Shield of Texas, Inc.
889 Ridge Lake Boulevard
Memphis, Tennessee 38120
(w/o enclosures)