



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2010

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

OR2010-05738

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# 377544 (TDI # 100855).

The Texas Department of Insurance (the "department") received a request for a copy of the charter file of Liberty Health Care Network ("Liberty"). You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also claim release of portions of the submitted information may implicate the proprietary interests of Liberty Mutual Manage Care, Inc. ("Liberty"). Accordingly, you notified Liberty of the request and of its right to submit arguments to this office as to why some of the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information, portions of which consist of representative samples.<sup>1</sup>

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<sup>1</sup>We 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.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Liberty has not submitted to this office any reasons explaining why portions of the submitted information should not be released. *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. We thus have no basis for concluding any portion of the submitted information constitutes Liberty's proprietary information, and the department may not withhold any portion of the submitted information on such basis.

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. You raise section 552.101 in conjunction with sections 1305.152(a) and 1305.154(a) of the Insurance Code. Section 1305.152(a) provides "[a] network shall enter into a written contract with each provider or group of providers that participates in the network. A provider contract under this section is confidential and is not subject to disclosure as public information under [the Act]." Ins. Code § 1305.152(a). Section 1305.154(a) provides "[e]xcept for emergencies and out-of-network referrals, a network may provide health care service to employees only through a written contract with an insurance carrier. A network-carrier contract under this section is confidential and is not subject to disclosure as public information under [the Act]." *Id.* § 1305.154(a). You have marked Exhibit 3 under section 1305.152(a) and Exhibits 4 and 5 under section 1305.154(a). Based on our review, we find the contracts you have submitted as Exhibits 3, 4, and 5 are confidential under these sections of the Insurance Code and must be withheld under section 552.101.<sup>2</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found 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 Nos. 600 (1992), 545 (1990). You state the information you have marked constitutes highly intimate and embarrassing personal financial information that is of no legitimate public interest and must be withheld under section 552.101 in conjunction

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

with common-law privacy. However, upon review, we find the submitted information contains no such markings, and we find none of the remaining information consists of highly intimate or embarrassing personal financial information. Consequently, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You state the department will redact the bank account numbers, bank routing numbers, and personal e-mail addresses you have marked pursuant to Open Records Decision No. 684 (2009). This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account 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. You also state the department will redact Texas motor vehicle record information. Open Records Decision No. 684 also authorizes a governmental body to withhold a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of a video depicting a discernable Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, we note the information you submitted contains no such Texas motor vehicle record information.

Finally, you state the department will redact the social security numbers you have marked pursuant to section 552.147(b) of the Government Code. Section 552.147(b) authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Accordingly, we agree the department may generally withhold the information you have marked under section 552.147.<sup>3</sup> However, we cannot determine whether the information we have marked constitutes a living person's social security number. Thus, to the extent the information we have marked constitutes social security numbers of living individuals, the department may withhold it under section 552.147. However, if the information we have marked does not constitute social security numbers of living individuals, the department may not withhold it under section 552.147.

In summary, the department must withhold Exhibits 3, 4, and 5 under section 552.101 of the Government Code in conjunction with sections 1305.152(a) and 1305.154(a) of the Insurance Code. The department may withhold the information you have marked under section 552.147 of the Government Code; however, the information we have marked may only be withheld to the extent this information constitutes social security numbers of living individuals. The remaining information must be released.

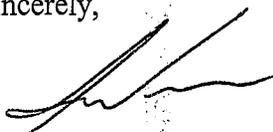
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<sup>3</sup>Thus, as you have marked the social security numbers of officers of the applicant company for redaction, we do not address your argument under section 552.101 of the Government Code in conjunction with section 59.001 of the Occupations Code.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 377544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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