



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Ms. Nneka E. Kanu
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2015-12948

Dear Ms. Kanu:

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# 569214 (GC No. 22246).

The City of Houston (the "city") received a request for the following information regarding a named individual's health plan: 1) the summary plan description and other plan documents, and 2) the schedule of benefits. 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 submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released.)

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the present request because it does not pertain to the categories of the request. This ruling does not address the public availability of non-responsive information, and the city need not release it in response to this request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In this instance, you seek to withhold the information at issue under section 552.101 in conjunction with common-law privacy. However, the requestor states the named individual signed a "Consent and Assignment" document authorizing the requestor "to obtain all plan/policy documents and to make all claims for payments against the Plan Sponsor, the [city]." Accordingly, we find the requestor is acting as the authorized representative of the individual whose privacy interest is at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. Accordingly, the city may not withhold the responsive information from this requestor under section 552.101 on the basis of common-law privacy. As you raise no other exceptions to disclosure, the city must release the responsive information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 569214

Enc. Submitted documents

c: Requestor
(w/o enclosures)