



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2016

Mr. Stanton Strickland
Deputy Commissioner
Legal Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-09621

Dear Mr. Strickland:

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# 607903 (TDI# 170068).

The Texas Department of Insurance (the "department") received a request for the names and compensation of officers and directors of the United Services Automobile Association ("USAA"). You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state the request may implicate the proprietary interests of USAA. Accordingly, you state, and provide documentation showing, you notified USAA of the request and of its right to submit arguments to this office as to why its information should not be released. *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 USAA. We have considered the submitted arguments and reviewed the submitted information.

Both the department and USAA argue some of the submitted information is confidential under section 552.101 of the Government Code. 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. Section 552.101 of the Government Code encompasses the doctrine of 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. *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 established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The department and USAA state the submitted information is part of an annual statement USAA is required to file with the department. The department and USAA assert the marked information within the statement, which consists of the salary and compensation paid to specific employees of the company, is confidential under common-law privacy. The marked information pertains to USAA officers and directors and relates solely to a private company's employment relationship with its employees. This information does not pertain to public employees, a governmental entity, or the receipt or expenditure of public funds. Therefore, upon review, we find the marked information is highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

USAA also raises section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find USAA did not make the specific factual or evidentiary showing required by section 552.110(b) that any of the remaining information constitutes commercial or financial information, the release of which would cause it substantial competitive harm. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the department may not withhold any of the remaining information under section 552.110(b) of the Government Code.

In summary, the department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 607903

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)