



September 28, 2001

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

OR2001-4365

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152571.

The Texas Department of Insurance (the "department") received a request for information relating to "the [CIGNA] Healthcare of Texas URA" and the identity of any party designated as the URA. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. You also believe that this request for information implicates the proprietary interests of CIGNA Healthcare of Texas, Inc. ("CIGNA"). You notified CIGNA of this request for information and of CIGNA's right to submit arguments to this office as to why the information at issue should not be released.<sup>1</sup> We have considered the department's arguments and those submitted by CIGNA and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You raise section 552.101 in conjunction with article 21.58A of the Insurance Code, which relates to Health Care Utilization Review Agents. Article 21.58A provides in part:

- (i) Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

providers. . . . Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner and copying as necessary for the commissioner to carry out his or her lawful duties under this code, provided, however, that *any information obtained or acquired under the authority of this subsection and article is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this article.*

Ins. Code art. 21.58A § 4(i) (emphasis added). You inform this office that the requested information is part of CIGNA's Utilization Review Plan, including policies and procedures for review. You assert that the submitted information relating to "Screening Criteria and Review Procedures" is confidential under section 4(i) of article 21.58A. We agree. Additionally, we note that the "Screening Criteria and Review Procedures" incorporate several of the other submitted documents, including (1) "Attachment E," titled "Sample - Standards for Delegation of Utilization Management Activities Document"; (2) Attachments B, C, and D, relating to certain delegated entities; and (3) Appendix C, titled "Delegation Oversight List." We therefore find that these documents also are confidential under section 4(i) of article 21.58A. We have marked the documents that the department must withhold under section 4(i) of article 21.58A in conjunction with section 552.101 of the Government Code.

You assert that a social security number contained in responsive biographical affidavits also is confidential under section 552.101. You explain that the biographical affidavits were submitted to the department with applications for a utilization review agent license under article 21.58A. A note following section 51.251 of the Occupations Code provides that

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

We conclude that the social security number at issue is confidential under section 51.251 of the Occupations Code and must also be withheld from the requestor under section 552.101 of the Government Code.

The department takes no position as to whether any of the remaining submitted information is excepted from public disclosure. The department believes, however, that CIGNA may have a proprietary interest in portions of that information.<sup>2</sup> CIGNA informs this office that

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<sup>2</sup>The remaining information consists of (1) the "biographical affidavits" that contains the social security number addressed above and (2) a letter dated October 2, 1998, enclosing a completed Application for Health Care Utilization Review Agent for CIGNA HealthCare of Texas, Inc.

it does not oppose disclosure of the fact that CIGNA is licensed to conduct utilization review activities in the state of Texas. CIGNA objects, however, to the release of “the contents of any files maintained by the [d]epartment in connection with CIGNA’s application for a URA license, including any material submitted as part of the initial application or any renewal application and any subsequent reports required [by] the URA laws and regulations.” CIGNA asserts that its URA licensing file, including related reports, audit results and related submissions, is confidential under article 21.58A of the Insurance Code. Having considered these arguments, we conclude that CIGNA has not demonstrated that article 21.58A of the Insurance Code makes any of the remaining information confidential.<sup>3</sup> Therefore, none of that information is excepted from disclosure under section 552.101 of the Government Code.

In summary, the submitted information relating to CIGNA’s “Screening Criteria and Review Procedures” is confidential under section 4(i) of article 21.58A of the Insurance Code and must be withheld from disclosure under section 552.101 of the Government Code. The social security number that appears in the biographical affidavits is confidential under section 51.251 of the Occupations Code and also must be withheld under section 552.101. The rest of the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental

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<sup>3</sup>The department explains that the biographical affidavit are not confidential under article 21.58A because “[a]rticle 21.58A §4(i) only addresses screening criteria and the utilization review plan. A biographical affidavit is neither of these.”

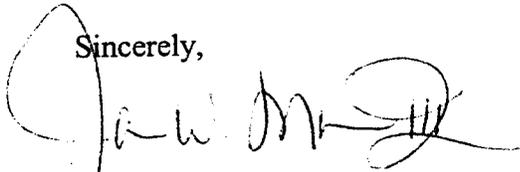
body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 152571

Enc: Submitted documents

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