



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

March 25, 2005

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Texas Department of Insurance
P. O. Box 149104
Austin, TX 78714-9104

OR2005-02579

Dear Ms. Villarreal-Reyna:

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# 220881.

The Texas Department of Insurance (the "department") received a request for an insurer's "response to the inquiry made to it by [the department]." You inform us that the insured's name and claim numbers will be withheld from disclosure in accordance with a previous determination issued to the department in Open Records Letter No. 2001-4777 (2001) (identifying information regarding enrollees in health plans).¹ See Open Records Decision No. 673 at 7-9 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)).

You assert that the remaining requested information may be excepted from disclosure, but you make no arguments against the disclosure of the information. However, you represent

¹The requestor informs us that the enrollee has authorized BCBS to communicate with him with regard to health care issues as they involve BCBS. You state that the medical release sent to the department is for documents held by BCBS, not the department. In Open Records Letter No. 2001-4777 (2001), we noted that section 552.023 of the Government Code grants a special right of access for such information to the enrollee or enrollee's authorized representative. Consent for a governmental body to release information excepted from disclosure to the general public but available to a specific person under section 552.023 must be in writing and signed by the specific person. See Gov't Code § 552.229(a). You have not informed us that the department has received from the enrollee in this case a written consent for the department's release of the information to the requestor. Thus, section 552.023 does not grant the requestor here a special right of access to the enrollee's private information.

that, pursuant to section 552.305 of the Government Code, the department has notified interested third party Blue Cross Blue Shield ("BCBS") of the request for information and its right to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). We have reviewed the submitted information. We have also considered arguments submitted by the requestor. *See* Gov't Code § 552.304 (allowing interested third party to submit comments indicating why requested information should or should not be released).

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 § 552.305(d)(2)(B). As of the date of this decision, BCBS has not submitted to this office any reasons explaining why its information should not be released. Therefore, this party has provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g.,* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). As the remaining submitted information is not otherwise confidential by law, the department must release it.

In summary, the department may rely on our previous determination issued to the department in Open Records Letter No. 2001-4777 (2001) with respect to the type of information addressed in that ruling. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#220881

Enc. Submitted documents

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