



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2005

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal and Compliance Division, MC 110-1A  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR2005-06242

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# 227213.

The Texas Department of Insurance (the "department") received a request for the 2004 fourth quarter claims data reports concerning five named Texas insurance providers. You claim that some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You also state that the submitted information may contain proprietary information, and thus, pursuant to section 552.305 of the Government Code, you have notified Humana Health Plan of Texas, Inc. ("Humana"), Pacificare of Texas ("PacifiCare"), Cigna Healthcare of Texas, Inc. ("Cigna"), and Health Care Service Corporation ("HCSC"), and United Healthcare ("United") of the request and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *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 under Public Information Act in certain circumstances). We have received correspondence from counsel for Humana, PacifiCare, and HCSC. We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note that 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 requested information relating to that party should be withheld from

disclosure. *See* Gov't Code § 552.305(d)(2)(B). In correspondence provided to this office, HCSC and United state that neither has an objection to the release of their information. Furthermore, as of the date of this letter, this office has not received comments from Cigna explaining how the release of the submitted information will affect its proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to Cigna would implicate its proprietary interest. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude that the department must release the information related to Cigna, HCSC, and United.

We turn now to Humana and PacifiCare's claims that portions of their information are excepted from disclosure under section 552.110(b) of the Government Code. This section excepts from disclosure "[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). Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (stating that business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Humana seeks section 552.110(b) protection for the data concerning the number of claims not timely paid. PacifiCare seeks section 552.110(b) protection for the "[n]umber of clean claims paid on or before 45 days following receipt, on day 45-59 following receipt, on day 60-89 following receipt, and on day 90 or later following receipt, [n]umber of clean claims subject to audit and paid at 85%, and [n]umber of claims paid at billed/contracted penalty rate" contained in its submitted fourth quarter reports. Humana argues that the information it seeks to withhold could be used by a third party to skew quotes to providers, to represent that premiums would be higher, and to misrepresent the quality of services. PacifiCare argues that release of the information it seeks to withhold would cause PacifiCare substantial competitive injury. Having reviewed the submitted arguments, we conclude that Humana has demonstrated by a specific factual or evidentiary showing that the release of the data concerning the number of claims not timely paid would cause the company substantial competitive harm. Thus, the department must withhold the information that reveals the number of claims not timely paid in Humana's fourth quarter reports under section 552.110(b) of the Government Code. However, we find, that PacifiCare has made only conclusory allegations that release of the information it seeks to withhold would cause PacifiCare substantial competitive injury. *See* ORD No. 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 PacifiCare's information at issue pursuant to section 552.110 of the Government Code.

Finally, the department claims that the marked e-mail addresses are confidential under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Further, the department states, and the records reflect, that the individuals whose e-mail addresses are at issue did not consent to release of their e-mail addresses. Accordingly, the department must withhold the e-mail addresses you have marked in accordance with section 552.137.

In summary, the department must withhold the data concerning the number of claims not timely paid in Humana's fourth quarter reports under section 552.110(b) of the Government Code. The department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining 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, 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

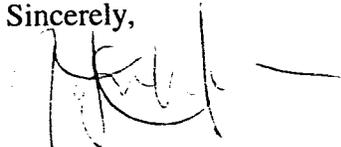
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



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Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 227213

Enc. Submitted documents

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