



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2010

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal & Regulatory Affairs Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2010-14220

Dear Ms. Waitt and 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# 393917 (TDI # 105754).

The Texas Department of Insurance (the "department") received a request for the last three successful Utilization Review Agent ("URA") applications and accompanying exhibits. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also claim release of the submitted information may implicate the proprietary interests of InforMed Medical Management Services, L.L.C. ("IMMS"); MCMC, L.L.C. ("MCMC"); and Bravo Health Texas, Inc. Accordingly, you notified these companies of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received arguments from IMMS and MCMC. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code and third party interests can provide compelling reasons to withhold information, we will consider whether or not the submitted information is excepted under the Act.

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. This section encompasses information protected by other statutes. Section 4201.154 of the Insurance Code provides the following:

(a) A [URA's] written screening criteria and review procedures shall be made available for:

- (1) review and inspection to determine appropriateness and compliance as considered necessary by the commissioner; and
- (2) copying as necessary for the commissioner to accomplish the commissioner's duties under this code.

(b) Any information obtained or acquired under the authority of this section, Section 4201.153, and *this chapter* is confidential and privileged and is not subject to [the Act], or to subpoena except to the extent necessary for the commission to enforce this chapter.

Ins. Code § 4201.154 (emphasis added). We note a URA applicant must meet all of the requirements of chapter 4201 and all applicable rules adopted by the Commissioner of Insurance to receive a certificate of registration to conduct a utilization review. *See id.*

§ 4201.102(a); *see also* 28 T.A.C. §§ 19.1701-19.1724 (rules for URAs). IMMS and MCMC assert their URA applications are confidential in their entirety under section 4201.154(b) of the Insurance Code because this information was obtained or acquired by the department pursuant to chapter 4201. Pursuant to section 552.303 of the Government Code, we asked the department to explain its interpretation of the applicability of section 4201.154(b). In response, you inform us “because the contents of the [URAs] application[s] are ‘acquired’ under the authority of [c]hapter 4201, section 4201.154(b) would make the entire application[s] ‘confidential and privileged[.]’” Thus, based on the department’s representation that the submitted URA applications were acquired by the department under the authority of chapter 4201, we find they are confidential in their entirety under section 4201.154(b). *See* Ins. Code § 4201.104 (commissioner shall promulgate forms including enumerated categories of information for certification); 28 T.A.C § 19.1704 (setting out requirements for certification application and attachments to application). Therefore, the department must withhold the submitted URA applications in their entirety under section 552.101 on that basis. As our ruling is dispositive, we do not address the remaining arguments against disclosure.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 393917

Enc. Submitted documents

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(w/o enclosures)

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