



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2010

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

OR2010-17357

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# 400105 (TDI # 107949).

The Texas Department of Insurance (the "department") received a request for the screening criteria for three Utilization Review Agent ("URA") applications. You state the department does not have responsive information in relation to two URA applications.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(2) copying as necessary for the commissioner to accomplish the commissioner's duties under this code.

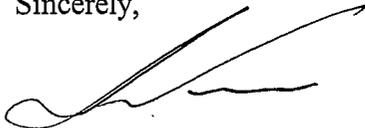
(b) Any information obtained or acquired under the authority of this section, Section 4201.153, and *this chapter* is confidential and privileged and is not subject to [the Act], or to subpoena except to the extent necessary for the commission to enforce this chapter.

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). You state the entire URA application is comprised of screening criteria and utilization review procedures of a URA. You further state the URA application is obtained under the authority of chapter 4201. Thus, based on the department's representation the submitted URA application was acquired by the department under the authority of chapter 4201, we find the application is confidential in its 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 application in its entirety under section 552.101 on that basis.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 400105

Enc. Submitted documents

c: Requestor
(w/o enclosures)