



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2011

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

OR2011-10858

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# 425254 (TDI# 114235).

The Texas Department of Insurance (the "department") received a request for group and individual life/health insurance rates and rules filings from 2008 to the present for thirteen named companies. You state the department has provided some of the requested information to the requestor, with certain information withheld under sections 552.130, 552.136, and 552.137 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ Although you state the department takes no position with respect to the public availability of the submitted rates and rules filings, you state their release may implicate the proprietary interests of BlueCross BlueShield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company ("BCBSTX") and Valley Baptist Insurance Company ("VBIC"). Accordingly, you state, and provide documentation showing, the department notified BCBSTX and VBIC of

¹Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including specified information under sections 552.130, 552.136, and 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from BCBSTX. We have considered the submitted arguments and reviewed the submitted information, some of which is a representative sample.²

Initially, you acknowledge, and we agree, the department failed to request a ruling or submit the responsive information within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). 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 the third-party interests at issue here can provide a compelling reason to withhold information, we will consider whether or not the information at issue is excepted under the Act.

You inform us some of BCBSTX's requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-04733 (2010) and 2010-00652 (2010). With regard to information in the current request that is identical to information previously ruled upon by this office, we conclude, as you have not indicated the law, facts, and circumstances on which the prior rulings were based have changed, the department must continue to rely on those rulings as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

BCBSTX's requested information was not the subject of the prior rulings, we will consider whether or not the information is excepted under the Act.

The department and BCBSTX inform us BCBSTX currently has a lawsuit pending against the Office of the Attorney General that pertains to some of BCBSTX's requested information: *Health Care Serv. Corp. v. Abbott*, No. D-1-GN-10-002746 (250th Dist. Ct., Travis County, Tex.). Furthermore, we note the remainder of BCBSTX's requested information is the same type, or is substantially similar to the type, of information at issue in the pending lawsuit. Accordingly, we are closing our file with regard to BCBSTX's remaining requested information without issuing a decision and will allow the trial court to determine whether the types of information at issue must be released to the public.

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 letter, we have not received comments from VBIC explaining why its submitted information should not be released. Therefore, we have no basis to conclude VBIC has protected proprietary interests in its submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Consequently, the department may not withhold VBIC's submitted information on the basis of any proprietary interests VBIC may have in the information. As no claims against disclosure have been made for VBIC's information, the department must release this information.

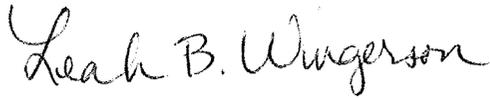
In summary, to the extent BCBSTX's requested information was ruled upon in Open Records Letter Nos. 2010-04733 and 2010-00652, the department must withhold or release the previously ruled upon information in accordance with those rulings. We will allow the trial court to determine whether or not BCBSTX's remaining requested information must be released to the public. The department must release VBIC's submitted information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 425254

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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