



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

OR2011-10887

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# 425887 (TDI# 115063).

The Texas Department of Insurance (the "department") received a request for the company name, filing ID, form number, type, effective date, and rate increase percentage relating to major medical individual market rate filings effective from January 1, 2010 to the date of the request. You state you have released or will release some information to the requestor.¹ Although you take no position on the public availability of the submitted information, you state the information at issue may implicate the interests of third parties. Accordingly, you state, and submit documentation showing, you notified Humana Insurance Co. ("Humana") and Valley Baptist Insurance Co. ("Valley Baptist") of the request for information and of their right to submit arguments to this office as to why their 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental

¹You inform us, and provide documentation showing, Aetna Insurance Co. and Blue Cross Blue Shield of Texas have notified the department they do not object to the release of their information. Therefore, you state you are withdrawing your request for a ruling on information pertaining to these third parties and have released or will release their information at issue to the requestor. Accordingly, this ruling does not address the information relating to Aetna Insurance Co. and Blue Cross Blue Shield of Texas.

body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, we note you have submitted information other than the company name, filing ID, form number, type, effective date, and rate increase percentage relating to the rate filings. This information was not requested and is therefore not responsive to the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, you acknowledge, and we agree, the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

Next, we note 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). As of the date of this letter, Humana and Valley Baptist have not submitted any comments to this office explaining how release of the responsive information would affect their proprietary interests. Accordingly, the department may not withhold any of the responsive information on the basis of Humana's or Valley Baptist's proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret). As you raise no exception to disclosure, the department must release the responsive information in its entirety.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 425887

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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