



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2012

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

OR2012-07708

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# 454360 (TDI# 124602).

The Texas Department of Insurance (the "department") received a request for small group market rate filings that are pending review. You state you have released some information to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the requested information may implicate the proprietary interests of Aetna Health, Inc. and Aetna Life Insurance Company (collectively "Aetna"); and Connecticut General Life Insurance Company ("Connecticut"). Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their 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 body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Aetna. We have also received and considered comments from an attorney representing

Humana, Inc. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered all of the submitted arguments and reviewed the submitted information.

Initially, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. 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 that 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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.101 of the Government Code and third party interests can provide compelling reasons for non-disclosure, we will consider whether the information at issue is excepted from disclosure under the Act.

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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Connecticut explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any of the information at issue would implicate the interests of this company. *See id.* § 552.110(b); 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. Accordingly, we conclude that the department may not withhold any of the information on the basis of any interest Connecticut may have in the 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. Section 552.101 encompasses section 1501.215 of the Insurance Code, which provides:

- (a) Annually, each small employer health benefit plan issuer that offers a small employer health benefit plan shall file with the

commissioner an actuarial certification stating that the issuer's underwriting and rating methods:

- (1) comply with accepted actuarial practices;
- (2) are uniformly applied to each small employer health benefit plan covering a small employer; and
- (3) comply with this subchapter.

(b) Each small employer health benefit plan issuer shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based on commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(c) A small employer health benefit plan issuer shall make the information and documentation described in Subsection (b) available to the commissioner on request. Unless the information or documentation relates to a violation of this chapter, the information or documentation is considered proprietary and trade secret information and is not subject to disclosure by the commissioner to a person outside the department except as agreed to by the issuer or as ordered by a court.

Ins. Code § 1501.215. The department explains that portions of the submitted information, which you have marked, consist of information that is subject to section 1501.215(c). The department explains that the submitted information includes rating methodology filings submitted to the department by small employer insurance issuers. We understand the submitted information at issue consists of documentation submitted to the department in order to obtain approval for these issuers' rate increases. We also understand that the exception for violations of this chapter does not apply in this instance. Based on your representations and our review, we agree that the information you have marked is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1501.215(c) of the Insurance Code.¹ The remaining information must be released.

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

¹As our ruling is dispositive for this information, we need not address Aetna's remaining arguments against release of this information.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 454360

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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