



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2013

Mr. Stanton Strickland
Associate Commissioner
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-11730A

Dear Mr. Strickland:

This office issued Open Records Letter No. 2013-11730 (2013) on July 10, 2013. In that ruling, you took no position on whether the submitted information was released. However, you now raise section 552.101 of the Government Code as an exception to disclosure. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on July 10, 2013. *See generally* Gov't Code § 552.011 (providing Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 502791 (TDI# 138155).

The Texas Department of Insurance (the "department") received a request for the approved form of a specified contract between Coventry Health Care Workers' Compensation, Inc. ("Coventry") and a provider. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state the release of the submitted information may implicate the proprietary interests of Coventry. Accordingly, you notified Coventry of the request and its right to submit arguments to this office. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with section 552.301 of the Government Code in asserting section 552.101 of the Government

Code. *See* Gov't Code § 552.301(b), (d). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). Generally, 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. Open Records Decision No. 150 at 2 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

You claim the submitted information is confidential under section 1305.152(a) of the Insurance Code. 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 information made confidential by other statutes, including section 1305.152(a). Section 1305.152(a) provides "[a] network shall enter into a written contract with each provider or group of providers that participates in the network. A provider contract under this section is confidential and is not subject to disclosure as public information under [the Act]." Ins. Code § 1305.152(a). You assert the submitted information consists of the type of contract made confidential under section 1305.152(a) of the Insurance Code. We note the information at issue consists of blank contracts. Thus, the department has failed to demonstrate any of the submitted information consists of a contract entered into between a network and a provider or group of providers that participates in the network. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Coventry. Thus, we have no basis to conclude Coventry has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(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, the department may not withhold any of the submitted information on the basis of any proprietary interest Coventry may have in the information.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body

must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, as no further exceptions to disclosure are raised, the submitted information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 502791

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)