



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 3, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance, MC-110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-1965

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108255.

The Texas Department of Insurance (the "department") received a request for "a copy of the State Monitoring Surveys of Quality of Care that [the department] currently conducts before licensing new companies and triennially thereafter" of 46 particular Health Maintenance Organizations ("HMOs") for the past two years as well as for "complaint data [the department compiled] in its Quality Assurance Quarterly Report." The department asserts that HMO quality of care examinations, medical records in the quality of care examination work papers and medical information in the quality assurance quarterly reports are confidential by law. The department also requests a ruling pursuant to section 552.305 of the Government Code, a statute which pertains to the release of requested information that implicates a third party's privacy or property rights. The department has submitted representative samples of the requested information.¹

This office notified 106 HMOs of this request. Gov't Code § 552.305 (permitting third party whose privacy or property rights are implicated by disclosure of requested information to raise and explain exceptions to public disclosure); *see* Open Records Decision

¹In reaching our conclusion here, we assume that 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

No. 542 (1990). Twenty HMOs responded to our notification, raising various exceptions in the Open Records Act and numerous confidentiality statutes.

Section 552.101 of the Government Code excepts from required public disclosure information deemed confidential by law, including information deemed confidential by statute. Section 9 of article 1.15 of the Insurance Code makes confidential a "final or preliminary examination report, and any information obtained during the course of an examination" of an insurance carrier. Ins. Code art. 1.15, § 9; *see* Open Records Decision No. 640 (1996). This provision is specifically made applicable to HMOs by statute. Act of June 1, 1997, S.B. 385, § 17, 75th Leg., R.S. (to be codified at Ins. Code art. 20A.17(c)). Furthermore, the Seventy-fifth Legislature passed the following provision:

The commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee . . . as necessary to carry out the purposes of this Act, including an enforcement action under Section 20 of this Act. That information is confidential and privileged and is not subject to the open records law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this Act.

See id. (to be codified at Ins. Code art. 20A.17(c)(4)). Finally, article 20A.27 of the Insurance Code provides that "examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest."

We have reviewed the submitted information. We believe the information is deemed confidential by statute. Accordingly, we conclude that the department must withhold the information from public disclosure based on section 552.101.

In light of our conclusion above, we need not address the applicability of other confidentiality statutes and exceptions the department and third parties raise. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/rho

Ref.: ID# 108255

Enclosures: Submitted documents

cc: Ms. Kim Clouser
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(w/o enclosures)

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