



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 29, 1998

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-2334

Dear Mr. Tredway:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118250.

The Department of Insurance (the "department") received a request for "a copy of the Kaiser (Kaiser) Foundation Health Plan of Texas actuarial certification for professional and public liability." The requestor states that it is her understanding that "the filing of the actuarial certification for professional and public liability is a Texas Department of Insurance requirement." You assert that the requested actuarial information is protected from disclosure under sections 552.101 and 552.112, and that the request may implicate third party property or privacy rights under section 552.305 of the Government Code.

You explain that Kaiser is a health maintenance organization which is generally subject to chapter 20A of the Insurance Code, known as the HMO Act. Article 20A.27 of the HMO Act provides that "[a]ll applications, filings, and reports required under this Act shall be treated as public documents." The HMO Act specifically requires annual reports to be filed, which must include a financial statement, financial projections for the next calendar year, and "such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act. Ins. Code § 20A.10(b).

Your July 10, 1998 letter to this office states that the actuarial information was "provided to TDI as a response to a request from TDI for the opinion." Kaiser submitted a brief to this office which states that the information was provided as part of the department's monitoring of Kaiser's financial matters. Because the HMO Act provides that certain

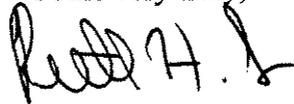
information is specifically public, in order to clarify under what provision of the HMO Act the department required Kaiser to create and submit the actuarial opinion, this office sent you a letter asking you to submit the department's correspondence in which it required Kaiser to create and submit the report. In a response to this office dated September 10, 1998, you state that "TDI can not currently locate any specific document requesting the actuarial certification." Your September 10 correspondence states that the actuarial information which is at issue is not part of Kaiser's annual filing "and should therefore be excepted from disclosure pursuant to Texas Government Code section 552.112."

Section 552.112 provides that information is protected from disclosure "if it is information contained in or relating to examination, operating, or condition report prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." Examination reports of insurance companies, such as actuarial reports, may generally be protected from disclosure under section 552.112. Attorney General Opinion No. MW- 411 (1981) (examination, operating, and condition reports of health insurance companies organized under Insurance Code chapter 20 excepted from disclosure under section 552.112); Open Records Decision No. 158 (1977) (examination reports of life insurance companies excepted from disclosure under section 552.112).

Based upon the department's assertions that the actuarial report is not a filing or document that is made public by the HMO Act or any other provision of law, we agree that section 552.112 is applicable to protect the actuarial information submitted. As the information at issue is protected from disclosure under section 552.112, we need not address Kaiser's section 552.110 argument or the department's other arguments against disclosure.

We are resolving this matter with an 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 should 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118250

Enclosures: Submitted documents

cc: Ms. Anne Hallecy
Friedman, Young & Suder
500 Throckmorton, 20th Floor
Fort Worth, Texas 76102
(w/o enclosures)