



August 23, 2001

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2001-3738

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151023.

The Texas Department of Insurance (the "department") received a request for "a copy of the document that contains the criteria upon which Connecticut General/Cigna bases their approval of medications." You do not raise an exception on behalf of the department. However, you indicate that the request may implicate the proprietary rights of CIGNA HealthCare ("CIGNA"). Consequently, you notified CIGNA of the request pursuant to section 552.305 of the Government Code. In turn, CIGNA has submitted arguments to this office explaining why it believes the requested information should be withheld. We have considered the submitted arguments and reviewed the submitted information.

We begin by noting that a portion of the submitted information is not responsive to the request. We have marked this document, which the department need not release to the requestor in response to the instant request for information.

With respect to the submitted prescription medication coverage criteria, CIGNA contends that the information is excepted from disclosure because release of this information would cause it substantial competitive harm. We understand CIGNA to be asserting section 552.110(b) of the Government Code as an exception to the disclosure of its criteria information. Section 552.110(b) provides, "Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from [required public disclosure]." This exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive

injury would result from disclosure. Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999). CIGNA contends that the information in question is taken from its Pharmacy Services Technical Manual and is available only to its employees. Furthermore, CIGNA indicates that the information "contains processing guidelines that were developed by CIGNA for the purpose of developing its standard coverage guidelines and for pharmacy benefit administration." Consequently, CIGNA argues that, if released, this information could be used by CIGNA's competitors to its disadvantage. Based on CIGNA's arguments and our review of the submitted information, we agree that information marked as proprietary information is excepted from disclosure under section 552.110(b) and must be withheld.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

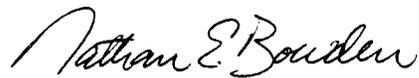
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 151023

Enc: Submitted documents

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