



December 17, 2001

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2001-5923

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156493.

The Employees Retirement System of Texas (the "system") received a request for the following information:

All complaints filed against Blue Cross Blue Shield of Texas or Behavioral Health Services, Inc. since Oct. 1999 regarding claims for mental health, eating disorder or chemical dependency treatment of minors (children and young adults).

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also inform us that you have notified the third parties whose privacy interests may be implicated by the request. *See* Gov't Code §552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). As of the date of this letter, we have received comments from two third parties. We have considered the exception claimed and reviewed the submitted information.

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Texas Insurance Code, art. 3.50-2, §10(c), provides in pertinent part:

The records of a participant in the Texas Employees Uniform Group Insurance Program in the custody of the trustee, or of an administrator or carrier acting on behalf of the trustee, are confidential and not subject to disclosure and are exempt from the public access provisions of chapter 552, Government Code, except as provided by this subsection

Tex. Ins. Code, art. 3.50-2, § 10(c).¹

You state that the submitted information consists of records of participants in the Texas Employee Uniform Group Insurance Program (“UGIP”). You inform us that the system administers UGIP pursuant to statute, and that BlueCross BlueShield of Texas is the third party administrator for the program. Based upon your representations and our review of the submitted information, we conclude that the information at issue is confidential pursuant to Texas Ins. Code, art. 3.50-2 §10(c). Therefore, the system must withhold the requested information under section 552.101.

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

¹As amended by Act of May 27, 2001, 77th Leg., R.S., ch. 1231, § 31, 2001 Tex. Sess. Law Serv. 2676, 2685 (Vernon) (to be codified as an amendment to Ins. Code, art. 3.50-2, § 10(c)).

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); *Texas Department of Public 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 Texas Building and Procurement 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 156493

Enc. Submitted documents

c: Mr. Gary L. Adkins
Legal Assistant
Consumer Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)

bc: 3rd parties
(w/o enclosures)