



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 6, 2003

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2003-0093

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174557.

The Texas Department of Insurance (the "department") received a written request for the following information:

the names of insurance carriers, specifically related to hospital claims, that reported information contained in your Closed Claim Database for the following years: 1995; 1996; 1997; 1998; 1999; and 2000.

You contend that the requested information is made confidential under section 38.162 of the Insurance Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 38.162 of the Insurance Code provides:

- (a) Information included in an individual closed claim report or an individual summary closed claim report submitted by an insurer under this subchapter is confidential and may not be made available by the department to the public.

(b) Information included in an individual closed claim report or an individual summary closed claim report may be examined only by the commissioner and department employees.

Ins. Code § 38.162. The documents you originally submitted to this office as being responsive to the records request do not consist of “individual” closed claim reports or “individual” summary closed claim reports contemplated under section 38.162. Rather, you inform us that the documents you submitted consist of printouts from an electronic data base, which consists solely of information directly derived from the closed claim reports. You also inform us that, although section 38.160 of the Insurance Code provides for the creation of an electronic data base that concerns closed claim reports and that is subject to public access, the public data base does not contain the requested information. Consequently, based on your representation that the requested information exists only in individual closed claim reports and in an internal data base intended only for departmental use, we conclude that the requested information is made confidential under section 38.162 of the Insurance Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.

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,

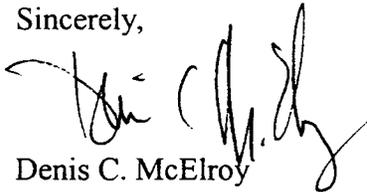
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/RWP/lmt

Ref: ID# 174557

Enc: Submitted documents

c: Ms. Sharon D. Johnson  
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(w/o enclosures)