



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2003

Mr. Steve Aragón  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2003-7625

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189881.

The Texas Health and Human Services Commission (the "commission") received a request for the following information: (1) the Texas Medicaid Medical Policy Manual, including all revisions, amendments and updates applicable from January 1999 to the present, (2) the Texas Medicaid Policy Interpretations Manual, including all revisions, amendments and updates applicable from January 1999 to the present, and (3) a complete list of the Texas Medicaid Management Information System edits and audits related to claims processing. You note that you will provide the requestor with a cost estimate to release the first and third requested items which are public information. You claim that the second requested item is excepted from disclosure under sections 552.108 and 552.110 of the Government Code. We have reviewed the representative sample of information you submitted and considered the exceptions you claim.<sup>1</sup> We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

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<sup>1</sup>We assume 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). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.108 of the Government Code, the “law enforcement exception,” provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime ....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution ... if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution ....

An agency whose function is essentially regulatory in nature is not a “law enforcement agency” for purposes of section 552.108. *See* Open Records Decision No. 199 (1978) (predecessor statute). We note that the primary function of the commission is regulatory in nature. Although the commission investigates both civil and criminal violations of the law, it refers criminal violations to the Attorney General for criminal enforcement. Therefore, the commission is not a law enforcement agency for purposes of section 552.108. Thus, the commission may not withhold the manual under section 552.108.

You note that the National Heritage Insurance Company (“NHIC”), a third party vendor, claims the Texas Medicaid Policy Interpretations Manual is proprietary. You state that you notified NHIC of the request and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). However, as of the date of this letter, NHIC has not submitted comments to this office explaining how release of the requested information would affect their proprietary interests. Therefore, NHIC has provided us with no basis to conclude that they have a protected proprietary interest in the submitted information. *See* Gov’t Code § 551.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must

establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, the submitted manual must be released to the requestor.

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).

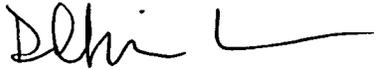
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 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,

A handwritten signature in black ink, appearing to read "Debbie K. Lee", with a long horizontal flourish extending to the right.

Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 189881

Enc. Submitted documents

c: Mr. Lance J. Ramsey  
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(w/o enclosures)