



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2004

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

OR2004-0326

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# 194396.

The Texas Department of Insurance (the "department") received a request for (1) Parkland Community Health Inc.'s agreement with Aetna, (2) any delegated or management agreement that UTMB Health Plan, Inc. has with any entity and/or management company, and (3) any delegated or management agreement that Driscoll Children's Health Plan has with any entity and/or management company. You state that the department does not have information responsive to the first item of the request.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You contend that the document responsive to the second item

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<sup>1</sup>We note that a governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990). Further, the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

of the request is confidential under section 11(c) of article 21.07-6 of the Insurance Code. Article 21.07-6 provides, in relevant part:

(a) An administrator may provide services only pursuant to a written agreement with an insurer or plan sponsor.

(b) The administrator and the insurer, plan, or plan sponsor shall retain a copy of the written agreement as part of their official records for the term of the agreement, and on written request of the [Commissioner of Insurance], the administrator shall make the written agreement available for inspection by the commissioner or his designated representative.

(c) Information obtained by the commissioner or the commissioner's designated representative from the written agreement is confidential and may not be made available to the public. The information may be examined by employees of the [State Board of Insurance] and the commissioner in carrying out functions under this article.

An "administrator" is defined as "a person who collects premiums or contributions from or who adjusts or settles claims in connection with life, health, and accident benefits, including pharmacy benefits, or annuities for residents of this state . . ." V.T.C.S. art. 21.07-6, § 1(1). You state that the information responsive to the second item of the request constitutes a contract between a third party administrator and UTMB Health Plans, Inc., as the health maintenance organization. Thus, we agree that this information is confidential under section 11(c) of article 21.07-6 of the Insurance Code and therefore must be withheld under section 552.101 of the Government Code as information made confidential by law.

You also contend that the information responsive to the third item of the request is confidential under section 843.156 of the Insurance Code, which provides in relevant part:

On request of the commissioner, a health maintenance organization shall provide to the commissioner a copy of any contract, agreement, or other arrangement between the health maintenance organization and a physician or provider. Documentation provided to the commissioner under this subsection is confidential and is not subject to the public information law, Chapter 552, Government Code.

Ins. Code § 843.156(d). You state that the information responsive to the third item of the request constitutes a contract between Driscoll Children's Health Plan and a provider. After reviewing the contract at issue, we agree that it is confidential pursuant to section 843.156(d) of the Insurance Code and therefore must be withheld pursuant to section 552.101 of the Government Code as information made confidential by law.

In summary, the department must withhold the entirety of the submitted information 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 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 'Sarah I. Swanson', with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 194396

Enc. Submitted documents

c: Ms. Marilyn C. Robertson, CLA  
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(w/o enclosures)