



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2004

Ms. Cynthia Villareal-Reyna
Section Chief, Agency Counsel
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2004-7841

Dear Ms. Villareal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209183.

The Texas Department of Insurance (the "department") received a request for a rating methodology filed by Humana Insurance Company ("Humana").¹ The department takes no position with regard to the release of the requested information. However, you have notified Humana, an interested third party, of the request for information pursuant to section 552.305 of the Government Code. *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 section 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). The department has submitted the documents at issue to this office. We also received correspondence from Humana. We have considered its arguments and reviewed the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Humana claims that the submitted information is confidential under article 26.41 of the Insurance Code, which provides:

(a) Compliance with the underwriting and rating requirements of this chapter shall be demonstrated through actuarial certification. Small employer carriers offering a small employer health benefit plan shall file annually with the

¹You state that Employers Health Insurance was assumed by Humana in 2002.

commissioner an actuarial certification stating that the underwriting and rating methods of the small employer carrier:

- (1) comply with accepted actuarial practices;
- (2) are uniformly applied to each small employer health benefit plan covering a small employer; and
- (3) comply with the provisions of this chapter.

(b) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based on commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(c) A small employer carrier shall make the information and documentation described in Subsection (b) of this article available to the commissioner on request. Except in cases of violations of this chapter, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside the department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

Ins. Code art. 26.41.² The department explains that the submitted information includes “the financial experience table, relativities, and rating methodology filing submitted to [the department] by [Humana], a small employer carrier.” Humana asserts that the documentation it submitted to the department in order to obtain approval to modify its rating method is confidential under article 26.41(c). Additionally, we understand that the exception for violations of this chapter does not apply in this instance. Based on these representations and our review, we agree that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 26.41(c) of the Insurance Code. As our ruling is dispositive, we need not address Humana’s remaining arguments.

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

²We note that article 26.41 of the Insurance Code has recently been recodified as section 1501.215 of the Insurance Code, effective April 1, 2005. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1274, § 3, 2003 Tex. Gen. Laws 3925.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 209183

Enc: Submitted documents

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