



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2008

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal Services Division
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714

OR2008-00629

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID #299323.

The Texas Department of Insurance (the "department") received a request for all SB 418 Quarterly Reports filed with the department pursuant to section 21.2821 of title 28 of the Texas Administrative Code by a specified company since April 1, 2007. You claim that portions of the submitted reports are excepted from disclosure under section 552.137 of the Government Code. You also explain that release of the requested information may implicate the proprietary interests of Cigna Healthcare of Texas, Inc. ("Cigna"). Accordingly, you state, and provide documentation showing, that you notified Cigna of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 to disclosure under Act in certain circumstances). We have considered arguments submitted by the department and Cigna, and we have reviewed the submitted information.

The department asserts that the quarterly reports at issue contain e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code. § 552.137(a)-(c). The e-mail addresses contained in the submitted

information are not of a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, pursuant to section 552.137. We now turn to the arguments submitted by Cigna.

Cigna claims that the submitted information is subject to a confidentiality agreement found within the SB 418 reports. Information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Consequently, unless the submitted information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Cigna asserts that the submitted quarterly reports are subject to section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Cigna asserts that release of the number of claims it has paid within certain statutory claims payment periods would provide Cigna’s competitors with “valuable insights into Cigna’s operational strengths and weaknesses that would be useful to a competitor in devising a means to improve its competitive position at the expense of Cigna.” However, we find Cigna has failed to establish by a factual or evidentiary showing that release of this information would cause Cigna competitive harm. Rather, Cigna makes only conclusory allegations that release of the information would harm it for purposes of section 552.110(b). Accordingly, the department may not withhold any information under this exception.

In summary, the department must withhold the information it has marked, as well as the information we have marked, under section 552.137 of the Government Code. The remaining information 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 299323

Enc. Submitted documents

c: Ms. Molly Underhill
MedSolutions, Inc.
730 Cool Springs Boulevard, Suite 800
Franklin, Tennessee 37067
(w/o enclosures)

Ms. Susan F. Morris
Counsel, CIGNA HealthCare
900 Cottage Grove Road
Hartford, Connecticut 06152
(w/o enclosures)