



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2008

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

OR2008-03414

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# 304800.

The Texas Department of Insurance (the "department") received a request for information related to complaints filed against Medicare Advantage plans during a specified time period. You state that you will withhold certain enrollee information pursuant to a previous determination issued by this office. *See* Open Records Letter No. 2001-4777 (2001) (concluding that department could withhold the name, address, telephone number, birth date, social security number, and claim number of enrollees without requesting a ruling from this office); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). We have marked some additional information that must also be withheld in accordance with Open Records Letter No. 2001-4777. You claim that some of the remaining submitted information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you raise section 552.111 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The department must withhold the insurance policy numbers it has marked under section 552.136 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). *Id.* § 552.137(a)-(c). You state that the department has not received consent to release the e-mail addresses you have marked. However, we note that one of the individuals whose e-mail address is at issue has consented to the release of his e-mail address. Thus, the e-mail address at issue, which we have marked, may not be withheld under section 552.137 of the Government Code. The department must withhold the remaining e-mail addresses under section 552.137.

In summary, the department may rely on our previous determination issued to the department in Open Records Letter No. 2001-4777 with respect to information addressed in that ruling. The department must withhold the marked insurance policy numbers under section 552.136 of the Government Code and the marked e-mail addresses under section 552.137 of the Government Code. The remaining information must be released.

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 304800

Enc. Submitted documents

c: Ms. Valerie S. Farwell
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(w/o enclosures)