



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2013

Mr. Stanton Strickland
Associate Commissioner
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-14128

Dear Mr. Strickland:

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# 496328 (TDI Request No. 139316).

The Texas Department of Insurance (the "department") received a request for "all fields in the URA Review Summary/Complaint Summary[.]"¹ You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified the following interested third parties of the department's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released: The Alaris Group, Inc.; Allmed Review Services, Inc.; Argus Services Corporation; Broadspire Services, Inc. ("Broadspire"); Bunch and Associates, LLC; Comprehensive Industrial Disability MGMT; Concentra Health Services, Inc.; Corvel Healthcare Corporation ("Corvel"); Coventry Health Care Workers' Compensation, Inc.; Forte, Inc.; Genex Services,

¹The department sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Inc.; Hannusch Group, LLC; Hartford Fire Insurance Company (“Hartford”); Health Direct, Inc.; Health Systems International; Healthsmart Care Management Solutions, LP; Injury Management Organization, Inc.; Jean S Austin & Associates, LLC; JI Speciality Services, Inc.; Liberty Mutual Managed Care, LLC; Marriott Claims Services Corporation; MCMC, LLC; Medical Audit Consultants, Inc.; Medical Review Institute of America, Inc.; MediCall, Inc. (“MediCall”); Medinsights, Inc.; MEI Associates, PA; Mitchell International, Inc. (“Mitchell”); North East Independent School District; Novare Texas, LLC; Oregon Health Systems, Inc.; Oris Technologies, Inc.; The Reny Company; Review Med, L.P.; Rising Medical Solutions; Sedgwick Claims Management Services, Inc.; Specialty Risk Services, LLC; Starr Comprehensive Solutions, Inc.; Texas Association of School Boards, Inc.; Texas Mutual Insurance Company; Travelers Indemnity Company of Connecticut; Tristar Managed Care; Unimed Direct, LLC; and Zurich Services Corporation. *See Gov’t Code § 552.305(d)*; *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received correspondence from Broadspire, Corvel, Hartford, MediCall, and Mitchell objecting to the release of some of the information at issue. We have reviewed the submitted information and arguments.

Initially, you acknowledge, and we agree, the department failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov’t Code § 552.302*; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on those interests.

Broadspire asserts its information must be withheld from release under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 4201.154(b) of the Insurance Code provides the following:

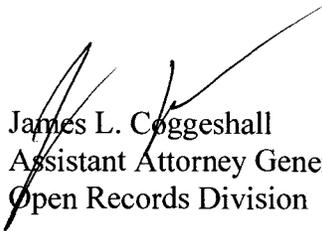
Any information obtained or acquired under the authority of this section, Section 4201.153, and this chapter is confidential and privileged and is not subject to [the Act], or to subpoena except to the extent necessary for the commission to enforce this chapter.

Ins. Code § 4201.154(b) (emphasis added). Broadspire asserts its information is confidential under section 4201.154(b) because the department obtained the information under chapter 4201 of the Insurance Code. In addition, the department states it acquired the submitted information pursuant to section 4201.204(c) of the Insurance Code. *See id.* § 4201.204(c) (utilization review agent shall submit to commissioner a summary report of all complaints at the times and in form specified by commissioner). Thus, the department informs us it obtained the submitted information under the authority of chapter 4201. Accordingly, based on these representations, we find the submitted information is confidential in its entirety under section 4201.154(b). *See id.* § 4201.154(b). Therefore, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with Section 4201.154(b) of the Insurance Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 496328

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address the other arguments to withhold this information.

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